Supreme Court, U.S.
FILED
JUL 15 1983
ALEXANDER L. STEVAS
CLERK

No. 82-660

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

HARRISON P. CRONIC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 14, 1982
CERTIORARI GRANTED FEBRUARY 22, 1983

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*The opinion of the court of appeals has been reprinted in the petition for a writ of certiorari and has not been reproduced.

CRIMINAL DOCKET—U.S. DISTRICT COURT

CR 80-21

CRONIC, HARRISON P.

U.S. Title/Section	Offenses Charged
18:1341-7	Devising a scheme & artifice to defraud & obtain money fm banks in OK & FL by using the US Postal Service Cts 1-13

2-5-80	ENT GJ ret w/Indict, order to file & for warrant
2-5-80	Issd Warrant
2-5-80	Filed INDICTMENT
	• • •
2-22-80	Filed dft's Mtmo of Reciprocal Discovery
2-22-80	Filed Arnold D. Levine's Entry of Appear on behalf of dft
2-22-80	ENT ARRAIGNMENT: Ent Order: For purposes of this proceeding Cnsl Levine adm to ct's bar. Dft apps w/retained cnsl; is fully apprised; pleads NOT GUILTY to all cts; given until 2-28-80 to file mtns & plf to respond by 3-5-80 or jury dkt wk of 3-10-80; dft obj to less than 30 days before trial purs to Speedy Trial Act;
	• • •
2-28-80	Filed dft's Obj to Trial Setting of 3-10-80 & Mtn to Ext Time to File PT Mtns
2-29-80	ORDER grtg dfts until 3-10-80 to file mtns; case reset for jury trial 4-14-80
3-3-80	MOTION of dft for Lv to Adopt Mtns of Co-Dfts Herein & to File Supple Mtns if Appropos w/Brf in Sup
3-3-80	MOTION of dft for Discvy of Matters Pertaining to GJ w/Brf in Sup
3-3-80	MOTION of dft for Discovery of Matters Occurring Before the Indicting GJ & To Dism Indict w/Brf in Sup
3-3-80	MOTION of dft for Inquiry of Electronic Surveillance Memo of Law w/Brf in Sup
3-3-80	MOTION of dft for Production of Govt Immunity Papers & Related Docs w/Memo
3-3-80	MOTION of dft Purs to Title 18:USC, Section 3504 w/Memo
3-3-80	MOTION of dft to Compel Disclosure of Existence & Substance of Promises of Immunity, Leniency or

	Preferential Treatment & Information About Govt Employees & Informants
3-3-80	MEMORANDUM in Sup of above
3-3-80	REQUEST of dft for Notice of Intention to Use Evidence w/Memo in Sup
3-3-80	REQUEST of dft for Discovery & Inspection
3-3-80	MEMORANDUM of dfts in Sup of Req for Discovery & Inspection—ws
3-3-80	MOTION of dft to Compel the Disclosure of All Evidence Favorable to the Dft
3-3-80	MEMORANDUM in Sup of Mtn to Compel the Disclosure of All Evidence Favorable to the Dfts
3-3-80	MOTION of Dft for Retention & Preservation of Rough Notes & Memoranda w/Brf in Sup
3-3-80	MOTION of dft to Dismiss & Memorandum
3-3-80	MOTION of dft for Severance & Memorandum in Support Thereof
3-10-80	MOTION of dft for Transcription & Production of GJ Test & for Production of Exhs Subponaed by the GJ & for Other Relief
3-10-80	MOTION to Dism
3-10-80	BRIEF in Sup of Mtn to Dism
	• • •
3-11-80	RESPONSE by govt to PT Mtns of Dfts Cronic & Cummings
	• • •
3-28-80	MOTION of dft for Continuance of Trial
4-1-80	ENT ORDER trans case to Judge Eubanks
	• • •
4-2-80	ORDER on mtns; dft's Mtn for Retention & Preservation of Rough Notes & Memoranda is grtd; dft's Request for Discovery & Inspection is grtd in part & denied in part; dft's Mtn to Compel the Disclosure of All Evidence Favorable to dfts is grtd in part & denied in part; dft's Req for Notice of Intention to Use Evidence is moot; Mtn of dfts for Severance is overruled; dft's Mtn to Compel Disclosure of Existence & Substance of Promises of Immunity, Leniency or Preferential Treatment & Information About Govt Employees & Informants is o/r'd; dft's Mtn for Production of Govt Immunity Papers & Related Docs is o/r'd; dft's Mtn for Lv to Adopt Mtns of Co-dfts Herein & to File Supple Mtns if Apropos is overruled; dft's Mtn for Inquiry of Elec

Surveillance & Mtn Purs to 18:3504 is overruled; dft's Mtn for Transcription & Prod of GJ Test & for Prod of Exhs Subp'd by GJ & for Other Relief is moot; dft's Mtn for Discovery of Matters Pertaining to GJ is o/r'd; dft's Mtn for Discovery of Matters Occurring Before the Indicting GJ & to Dism the Indict is o/r'd; dft's Mtns to Dismiss are overruled; 4-7-80 at 10 am in USA's office is designated as time & place for govt to furnish movant items (Daugherty) ve

* * *

4-10-80 ENT ORDER grtg continuance of trial & striking case fm jury trial on 4-14-80 * * *

4-10-80 SUPPLEMENTAL MOTION of dft for Continuance of Trial

4-30-80 JURY: Mon, 5-12-80, 9:30 am (Eubanks)

* * *

5-8-80 LETTER fm ct to dft's atty that trial will not be started until sometime after 6-1-80 (Eubanks)

* * *

5-23-80 JURY: 6-16-80, 9:30 am (Eubanks)

6-5-80 MOTION of dft's atty for Lv to W/D as Cnsl for Dft

6-6-80 ENT ORDER on Arnold D. Levine's Mtn for Lv to W/D as cnsl for dft Cronic—matter can be hrd w/o presence of Mr. Levine & it is urgent that same be hrd so other cnsl can be employed or apptd; both dfts are dir'd to app in per for said hrg to be hrd Thurs, 6-12-80, 9:30 am (Eubanks)

* * *

6-11-80 MOTION of dft to Deny the Withdrawal of Mr. Arnold D. Levine as cnsl for Harrison P. Cronic

6-12-80 ENT HRG ON LEVINE'S MTN FOR LV TO W/D AS CNSL FOR DFT CRONIC: dfts Cronic & Cummings app in per; Mr. Berkowitz apps for Mr. Levine; Mtn continued until 6-19-80; 9:30 am unless Mr. Levine able to app sooner; ct will appt cnsl for Mr. Cronic in the event the ct grants Mr. Levine's Mtn to w/d (Eubanks)

6-12-80 ORDER that Chris E. Colston be apptd as substitute cnsl until hrg is held (Eubanks)

6-13-80 REPLY of Arnold D. Levine to Mtn Filed by Harrison P. Cronic

6-19-80 ENT EVID HRG ON MR. ARNOLD LEVINE'S MTN TO WITHDRAW: dfts' Cronic & Cummings

app in per; Mr. Levine sworn, test hrd; Mr. Levine's Mtn to W/d grtd; Mr. Colston will serve as dft Cronic's cnsl (Eubanks)

6-19-80 CJA 20 apptd Chris E. Colston as dft's cnsl

6-19-80 ENT HRG ON DFT CRONIC's MTN FOR CONTINUANCE: dft Cronic's Mtn for Continuance grtd; case cont'd until July 14, 1980, 9:30 am; dft Cummings waives speedy trial rights; dft Cronic grtd lv to file Mtn for Investigator; Dft Cronic's req for apptmt of other legal cnsl is denied (Eubanks)

6-19-80 MOTION of dft for Continuance

6-19-80

* * *

6-20-80 JURY: 7-14-80, 9:30 am (West)

6-24-80 MEMORANDUM of dft of Reciprocal Discovery

* * *

6-26-80

7-1-80 APPLICATION & ORDER to Issue Subp at Govt Expense to Robert W. Bumgarner, John L. Brown, Larry V. Howell, Lee Martin, Bill Harrison & Edward W. Frantel on 7-14-80, 9:30 am

7-14-80 ENTER JURY TRIAL: dft apps in per; ptys announce ready; jury duly empaneled & admonished; rule invoked on dft's mtn; plf & dft make openingstmt; plf presents case in chief w/test of wits; plf & dft make opening stmt; plf presents case in chief w/test of wits; plf exhs 1-1C, 2-2C, 3-3C, 4, 4A, 5-5C, 6-6B, 7-7B, 8-8D, 9-9E, 10-10E, 11-11H, 12-12F, 13-13E, 35, 36, 43, 44, adm; ct adjourns to 7-15-80, 9:30 am (Eubanks)

7-15-80 ENTER FURTHER JURY TRIAL: plf continues case w/test of wits; plf's exhs 4B, 5D, 5E, 5F, 6C, 7C, 7D, 8E, 8F, 8G, 9F, 9G, 10F, 10G, 10H, 11I, 11J, 11K, 11L, 12G, 12H, 12I, 12J, 13F, 13G, 13H, 13I, 13J, 14-34, 41, 42, 45, 46, 46A, 47-49, 2, 5-8 adm; ct adjourns to 9:30 am, 7-16-80 (Eubanks) dk

7-16-80 ENT FURTHER JURY TRIAL: plf continues case in chief w/test of wits+f's exhs 37-40, 50-52 adm; dft's exhs 1, 10, 11 adm; plf rests; ct adjourns to 10 am, 7-17-80 (Eubanks)

* * *

7-17-80 ENTER FURTHER JURY TRIAL: dft's mtn for D.V. is denied; ptys rest; closing args; ct instructs

jury; bailiff sworn; jury retires to deliberate at 2:45 pm; jury returns at 5 pm w/verdict GUILTY on cts 1, 4-13 & not guilty on cts 2 & 3; case ref'd to Prob Ofc; remanded to USM to await sentencing; bond raised to $30,000 C/S (Eubanks)

* * *

8-28-80 ENTER SENTENCING: sent to cust of AG 5 yrs on ct 1; 5 yrs on ea of cts 4 thru 7 consec w/ea other & consec w/ct 1; 5 yrs on ea of cts 8-13 conc w/ea other & conc w/ct 7; ct exonerated dft's 10%, $5,000 appear bond; dft advised of right to appeal; bond fixed in amt of $30,000 C/S; remanded to USM (Eubanks)

8-28-80 ORDER of Jdgm & Commitment

* * *

A True Copy
Herbert T. Hope, Clerk
by /s/ Sam Leigh Stevenson

GENERAL DOCKET

COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 80-1955 G75 F29 1126

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

HARRISON P. CRONIC, DEFENDANT-APPELLANT.

DATE	FILINGS-PROCEEDINGS
9-11-80	Case docketed. Record on appeal due 9/15/80.
9-18-80	ROA.DUE. Record on appeal due 10/15/80
9-20-80	NAPR.F Notice of appearance filed by green as attorney for appellee.
	* * *
11-18-80	Appellants motion to substitute attorney James P. Linn for Chris E. Colston filed. Orig.
	* * *
1-21-81	Record on appeal filed, Vol I (pleadings) (294pp.), Vol II-V (exhibits), Vol VI (transcript) (605pp.), Vol VII (transcript) (26pp.), Vol VIII (transcript) (15pp.), Vol IX (transcript) (17pp.) all original, [t.p. 957].
1-30-81	Record on appeal filed. Vols. VI, VII & VII (transcripts), copies.
1-30-81	Appellant's motion for substitution of Attorney Linn for Attorney Colston denied. Barrett & McKay David William Duncan appointed as attorney for the appellant. Appellant's brief due 1/20/81.
2-2-81	Chris Colstron's motion to withdraw as attorney for appellant filed. Moot—No action necessary—see order of 1/30/81 appointing other counsel.
2-17-81	Appellant's motion to extend time to 3/14/81 to file brief filed. Order granting appellant's motion to extend time to 3/14/81 to file brief
2-20-81	Notice of appearance filed by Duncan as attorney for appelle
3-7-81	M.EXTM.BR.F. Appellant's motion to extend time to 4/6/81 to file brief filed,

3-10-81	Order granting appellant's motion to extend time to 4/6/81 to file brief
3-18-81	Appellant's motion to supplement record on appeal submitted to panel.
3-27-81	Ordered appellant's motion to supplement record on appeal granted
	Record on appeal filed, Supplemental Vol I (pleadings), Orig and 1 cc. (prepared by Court of Appeals per HKP)
4-1-81	Record on appeal filed, Supplemental Vol I (pleadings) 181 pp. orig and 1 cc (prepared by District Court)
4-2-81	Appellant's motion for extension of time to 4/28/81 to file brief filed,
4-3-81	Granted appellant's motion for extension of time to 4/28/81 to file brief
	* * *
4-22-81	Appellant's motion to dismiss attorney Duncan for appellant filed,
	M.APPT.ATTY.F. Appellant's motion to appoint attorney filed
7-27-81	Appellee's motion to file brief time having expired filed, orig. only. c/s.
4-22-81	Appellant's motion to dismiss attorney Duncan submitted to panel.
	Appellant's motion to appoint attorney submitted to panel.
4-24-81	David W. Duncan's motion to withdraw as attorney for appellant filed.
	Appellant's (Duncan's) motion to extend time to file appellant's brief to no specified time filed
	Duncan's motion to withdraw as attorney for appellant submitted to panel.
	Appellant's motion for extension of time to file brief submitted to panel.
5-7-81	Order denying Duncan's motion to withdraw as attorney * * *
	BR.DUE—appellant's brief due 5/28/81; appellant may file supplemental pro se brief 21 days thereafter
4-17-81	appellant's pro se motion to reverse district court's denial of new trial filed

5-7-81	order that appellant's pro se motion to reverse district court's denial of new trial be filed as of 4/17/81 and submitted to Court together with briefs.
5-4-81	AFDT.F. Appellant's (pro se) affidavit filed.
5-28-81	BR.F. Appellant's brief filed,
5-26-81	RMK.F. Appellant's pro se additions and corrections to supplement to the record on appeal filed March 7, 1981, filed, Orig. & 10 c.. c/s.
6-17-81	BR.F. Pro Se appellant's brief filed,
6-24-81	Appellee's motion for extension of time to 7/22/81 to file brief filed
	Granted appellee's motion for extension of time to 7-22-81 to file brief
7-27-81	Appellee's motion to file brief time having expired granted
7-27-81	BR.F. Appellee's brief filed
8-4-81	Appellant's motion for extension of time to 8/24/81 to file reply brief filed
	Granted appellant's motion for extension of time to 8/24/81 to file reply brief
8-24-81	Appellant's reply brief filed
8-25-81	Appellant's (pro se) reply brief filed
10-23-81	Hearing set for November, 1981, Term—Denver, Colorado
11-4-81	Pro se appellant's (Cronic's) motion to participate in oral argument filed
11-5-81	Pro se appellant's motion to participate in oral argument submitted to panel.
11-10-81	Denied pro se appellant's motion to participate in oral argument disposed of by Seth
11-19-81	[Argued and submitted]—Seth, Seymour, Peck
12-2-81	Letter from appellant filed, Orig. & 3cc. c/s.
	Letter from appellant submitted to panel.
4-19-82	Published, signed opinion filed. seth, Seymour, Peck Writing Judge is Peck
	Judgment vacated. The cause is remanded.
	* * *
6-3-82	Appellee's petition for rehearing en banc filed.
6-3-82	Appellee's petition for rehearing en banc submitted to panel.
6-25-82	Appellant's response to appellee's petition for rehearing en banc filed. Orig., 9cc., c/s.
	Appellant's response to appellee's petition for rehearing en banc submitted to panel.

7-16-82	Denied, appellee's petition for rehearing en banc. Disposed of by en banc panel. Parties notified by mail.
7-26-82	MDT.ISS. Mandate issued to district court.

* * *

10-22-82	P.WRIT.CERT.F Notice of appellee's filing for certiorari on 10/14/82 Supreme Court No. 82-660.

No. CR80 21-D

UNITED STATES OF AMERICA, PLAINTIFF

v.

HARRISON P. CRONIC, WYLIE C. MERRITT, JR., AND CAROLYN S. CUMMINGS, DEFENDANT

Violations: 18 USC 1341, 2

INDICTMENT

The Grand Jury charges:

COUNT I

That from on or about the 26th day of March, 1975, and continuing thereafter up to on or about the 7th day of October, 1975, at Oklahoma City, Oklahoma County, and Norman, Cleveland County, both within the Western Judicial District of Oklahoma; at Tampa, Hillsborough County, Middle Judicial District of Florida; in the State of Illinois; and at other places to the grand jurors unknown,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

devised and intended to devise a scheme and artifice to defraud and to obtain money from banks in Oklahoma and Florida by inducing said banks in the names of "Skyproof Manufacturing, Inc." and Wylie C. Merritt, Jr., to pay out substantial sums of cash, furnish deposit credits and to obligate the said banks to pay out cash or furnish deposit credits for a series of insufficient funds checks, without the intent and capability of performance on their parts because they knew that said series of written checks were insufficient. The scheme and artifice as devised by Harrison P. Cronic, Wylie C. Merritt, Jr., and Carolyn S. Cummings was also to obtain money by means of the following false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, presentations and promises would be false when made in substance as fol-

lows: That by the continuous issuance of insufficient funds checks on Skyproof Manufacturing, Inc., and Wylie C. Merritt, Jr., or by "floating" the series of insufficient funds checks between the said banks, they thereby created false or inflated balances in the various bank accounts of Skyproof Manufacturing, Inc., and Wylie C. Merritt, Jr.; to deposit in various bank accounts of two banks in Norman, Oklahoma, and one in Tampa, Florida, assigned and/or controlled by said defendants, checks drawn on banks in Oklahoma and Florida issued in the name of Skyproof Manufacturing, Inc., and Wylie C. Merritt, Jr., well knowing at the time of issuance that there were not sufficient funds on deposit to cover said checks.

The true facts were that the "Skyproof Manufacturing Inc." at the material times and places was largely a facade and pretense to permit the withdrawal of large sums of money from the said banks; that Harrison P. Cronic, Wylie C. Merritt, Jr., and Carolyn S. Cummings, at the time of devising such scheme or artifice to defraud, and making such pretenses, representations and promises, and at the time of the mailings in question, did not have the intent, resources or capability of covering all the insufficient funds checks issued by or at their direction between the said banks; that they kept insufficient funds checks "floating" between said banks to create inflated or false balances in the various bank accounts controlled by them.

1. It was a part of the scheme and artifice to defraud that on or about April 22, 1975, Carolyn S. Cummings, at Harrison P. Cronic's direction, did open checking account 00-777-3 in the name of Skyproof Manufacturing, Inc., at Metropolitan Bank, Tampa, Florida.

2. It was a further part of the scheme and artifice rior to March 26, 1975, Wylie C. Merritt, Jr., at Harrison P. Cronic's direction, did open checking account 015 4268 in his name at First National Bank and Trust Company, Norman, Oklahoma.

3. It was a further part of the scheme to defraud that on or about June 19, 1975, Wylie C. Merritt, Jr., at Harrison P. Cronic's direction, did open checking account 01 8878 in

the name of Skyproof Manufacturing Co., Inc., at Norman Bank of Commerce, Norman, Oklahoma.

4. It was a further part of the scheme and artifice that beginning on or about March 26, 1977, and continuing June 15, 1975, Wylie C. Merritt, Jr., at Harrison P. Cronic's direction, did deposit at First National Bank and Trust Co., Norman, Oklahoma, a series of checks, totaling $35,200.00, drawn by Carolyn S. Cummings, at Harrison P. Cronic's direction, on the Skyproof Manufacturing, Inc. account in Metropolitan Bank, Tampa, Florida, and would and did receive cash, bank obligations and deposit credits from said First National Bank and Trust Co., knowing at the times the checks were so deposited that there were insufficient funds on deposit in the Skyproof Manufacturing, Inc. account at Metropolitan Bank to pay the checks.

5. It was a further part of the scheme and artifice that Harrison P. Cronic, Wylie C. Merritt, Jr., and Carolyn S. Cummings did cause the checks, drawn as aforesaid, to be forwarded by mail from Fidelity Bank at Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois.

6. It was a further part of the scheme to defraud that beginning on or about June 23, 1975, and continuing until on or about October 7, 1975, Carolyn S. Cummings, Harrison P. Cronic, and Wylie C. Merritt, Jr., did and/or cause to be deposited at Norman Bank of Commerce, Norman, Oklahoma, a series of checks totaling $4,143,573.95, drawn by Carolyn S. Cummings on the Skyproof Manufacturing, Inc. account in Metropolitan Bank, Tampa, Florida, and would and did receive cash, bank obligations, and deposit credits from Norman Bank of Commerce, knowing at the time the checks were so deposited that there were insufficient funds on deposit in the Skyproof Manufacturing, Inc. account at Metropolitan Bank to pay the checks.

7. It was a further part of the scheme to defraud that beginning on or about June 25, 1975, and continuing until on or about October 7, 1975, Carolyn S. Cummings and Harrison P. Cronic did cause to be deposited at Metropolitan Bank, Tampa, Florida, a series of checks, totaling $4,600,881.39, drawn by Carolyn S. Cummings on the Sky-

proof Manufacturing, Inc. account in Norman Bank of Commerce, Norman, Oklahoma, and would and did receive cash, bank obligations, and deposit credits from Metropolitan Bank, knowing at the times the checks were so deposited that there were insufficient funds on deposit in the Skyproof Manufacturing, Inc. account at said Norman Bank of Commerce to pay the checks.

8. And it was a further part of the scheme and artifice that Harrison P. Cronic, Carolyn S. Cummings, and Wylie C. Merritt, Jr., did deposit in the Skyproof Manufacturing, Inc. account at said Norman Bank of Commerce during the period June 23, 1975, to October 16, 1975, checks and wire transfers in the amount of $4,841,073.95, all drawn on the Skyproof Manufacturing, Inc. account at Metropolitan Bank, Tampa, Florida. They would and did represent to said Norman Bank of Commerce that there were sufficient funds in the Skyproof Manufacturing, Inc. account at said Metropolitan Bank to pay the checks previously drawn, as aforesaid, whereas in truth and in fact, as they then well knew, there would be and were at all times between the 23rd day of June, 1975, and the 16th day of October, 1975, insufficient funds on deposit to pay for the checks Harrison P. Cronic, Carolyn S. Cummings and Wylie C. Merritt, Jr. intended by such false and fraudulent representations and pretenses to deceive and defraud said Norman Bank of Commerce and to induce the bank to part with its funds and to convert and appropriate such funds to their own profit and use.

9. That on or about May 6, 1975, at Oklahoma City, Oklahoma County, Western Judicial District of Oklahoma, Harrison P. Cronic, Wylie C. Merritt, Jr., and Carolyn S. Cummings, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises willfully and knowingly did cause to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter, according to the directions thereon, from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the

following checks drawn on the Skyproof Manufacturing, Inc., account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1237	$865.10	May 2, 1975	Wylie C. Merritt, Jr., CPA
1238	$931.25	May 5, 1975	Wylie C. Merritt, Jr., CPA

COUNT II

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about May 14, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc., account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Section 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1239	$1,341.52	May 8, 1975	Wylie C. Merritt, Jr., CPA
1240	$1,698.27	May 10, 1975	Wylie C. Merritt, Jr., CPA

COUNT III

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about June 1, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc., account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	Payee
1306	$1,485.10	May 15, 1975	Wylie C. Merritt, Jr., CPA
1309	$1,847.69	May 15, 1975	Wylie C. Merritt, Jr., CPA

COUNT IV

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about June 23, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following check drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the

Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1552	$500.00	June 20, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT V

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about July 2, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1153	$2,000.00	June 25, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1555	$2,600.00	June 27, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1556	$9,100.00	June 28, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT VI

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about July 22, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1787	$10,100.21	July 19, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1788	$11,950.00	July 21, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT VII

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about July 29, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1792	$19,986.50	July 24, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1793	$16,165.00	July 25, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT VIII

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about July 29, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1795	$11,872.52	July 26, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1846	$19,150.00	July 28, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1847	$18,839.11	July 28, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1848	$16,900.00	July 29, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT IX

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about August 12, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., AND
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
1926	$ 9,820.80	August 8, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1927	$16,820.18	August 9, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1928	$ 8,905.30	August 8, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1929	$ 9,116.32	August 9, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
1930	$ 7,793.87	August 11, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT X

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about September 13, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretense, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	Date	*Payee*
2147	$23,002.43	September 10, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2148	$24,129.45	September 11, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2149	$31,617.54	September 11, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2150	$26,413.27	September 11, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2151	$19,050.10	September 11, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT XI

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about September 24, 1975, at Oklahoma City, Oklahoma, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
2325	$31,029.81	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2326	$ 565.75	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2351	$22,441.35	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2352	$ 7,271.04	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2356	$18,761.59	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2357	$14,323.65	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2361	$21,050.10	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2362	$17,545.89	September 23, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT XII

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about October 2, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and delivered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
2378	$31,097.96	September 30, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2381	$27,629.55	October 1, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2401	$27,924.22	Octber 1, 1975	Skypoof Manufacturing, Inc. Material & Supply Division
2409	$29,754.68	October 1, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2415	$22,337.90	October 1, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2439	$32,353.65	October 1, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

COUNT XIII

The Grand Jury realleges all of the allegations of Count I of this Indictment except those contained in paragraph numbered nine thereof, and further charges:

That on or about October 8, 1975, at Oklahoma City, Oklahoma County, in the Western Judicial District of Oklahoma,

HARRISON P. CRONIC,
WYLIE C. MERRITT, JR., and
CAROLYN S. CUMMINGS

for the purpose of executing the aforesaid scheme and to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises, willfully and knowingly, according to the directions thereon, caused to be deposited in an authorized mail depository, to be sent and de-

livered by the Postal Service of the United States, mail matter from Fidelity Bank N.A., Oklahoma City, Oklahoma, to Northern Chicago Trust Company, Chicago, Illinois, a letter containing the following checks drawn on the Skyproof Manufacturing Inc. account 00 777 3, in the Metropolitan Bank, Tampa, Florida, all in violation of Title 18, United States Code, Sections 1341 and 2:

Check No.	*Amount*	*Date*	*Payee*
2437	$35,811.51	October 7, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2438	$33,658.37	October 7, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2440	$32,397.86	October 7, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2441	$31,883.12	October 7, 1975	Skyproof Manufacturing, Inc. Material & Supply Division
2442	$34,808.36	October 7, 1975	Skyproof Manufacturing, Inc. Material & Supply Division

A TRUE BILL:
FOREMAN OF THE GRAND JURY

LARRY D. PATTON
United States Attorney

ORIGINAL SIGNED BY:

JOHN E. GREEN
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

CR-80-21-E

United States of America, plaintiff,

v.

HARRISON P. CRONIC AND CAROLYN S. CUMMINGS,
DEFENDANTS.

MOTION TO WITHDRAW
HAD BEFORE THE HONORABLE LUTHER B. EUBANKS
ON JUNE 19, 1980
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

MR. CHARLES WATERS, Assistant United States District Attorney, Federal Building, Oklahoma City, Oklahoma, appearing on behalf of the government.

MR. CHRIS E. COLSTON, First National Building, Oklahoma City, Oklahoma, appearing on behalf of the Defendant, Cronic.

MR. ARNOLD D. LEVINE, Tampa, Florida, appearing on behalf of the Defendant Cummings.

* * *

[2] MR. LEVINE: Good morning, Your Honor. Arnold Levine.

THE COURT: Yes, Mr. Levine. Did you get through with your trial in Florida?

MR. LEVINE: Yes, we did. In fact, the Jury came in yesterday afternoon and I was able to get on a plane.

THE COURT: I see. All right. Well, Mr. Cronic has filed a response to your application to withdraw as you have seen involves sharp conflict, confactual contentions of the parties and I have got your response to his. I hardly know how to proceed here.

MR. LEVINE: If I may, I think I could advise Your Honor, either as an officer of the court or under oath, it's

immaterial to me, I initially met with both Mr. Cronic and Miss Cummings. Mr. Cronic retained me to represent the two of them and I asked them at that junction in the presence of one another whether or not they throught there was a conflict in my representation of them and they both stated to me at that time, no. But we were all three togetner. And predicated upon that, I appeared before the magistrate for the arraignment representing the two parties and entered pleas of not guilty for them.

Some several weeks ago, it's difficult for me to be [3] precise about the time. Well, let me go back historically. Mr. Cronic did not pay an agreed upon retained fee, I kept telling him that if he didn't, I would seek withdrawal. But I recognize as a former United States Attorney and practice primarily in federal court for 20 years that would be an inappropriate basis to file before the court and I never did. The matter I haven't got a nickel from him and I never filed the motion.

Some several weeks ago while I was in the midst of this federal criminal trial in Tampa, I met privately with Miss Cummings and her employer, Mr. T. J. Johnson. And at that point in time, she for the first time explained her role and her position in connection with the matters that gave rise to the charges. And as a result of that conversation, it became clear to me that the positions of the parties were absolutely inconsistent, absolutely inconsistent. And as soon thereafter I could being involved in the trial on a day to day basis, I prepared and filed the motion.

I represent to Your Honor that this motion has not been filed based on the failure of Mr. Cronic to pay me a fee, if that was the only predicate and the only problem, I would come here and represent him for nothing. I have done that on any number of occasions as a court-appointed attorney or for the fact that I failed to make appropriate arrangements with the client and get security. As an officer of this Court, I advise [4] Your Honor that one attorney cannot represent these two Defendants. Their positions are irreconcilable and Miss Cummings' defense as first advised to me in this private conversation that I told you about is absolutely incompatible with the positions of Mr. Cronic. And

there's no way that I could handle both of their representations.

THE COURT: Well, of course, the Court realizes those things happen. You did represent rather authoritatively to our magistrate that there would be no conflict in interest at the time of arraignment, but you say that has developed since then. Now, I think Mr.—who is—

THE COLSTON: I'm Chris Colston, Your Honor.

THE COURT: I'm sorry, I haven't met him. I found him on the alphabetical list of eligible lawyers and I appointed him to represent Mr. Cronic, but I haven't met him. I talked to him on the phone.

MR. LEVINE: Pardon me, Your Honor. In the context that is absolutely true what the transcript reflects and as I mentioned to Your Honor when I met the two parties together and Mrs. Cummings told me she was concerned about expressing her few at that point in time in the presence of Mr. Cronic and they both said that there's no problem and I had to rely upon that and that is the predicate why I made the representation to the magistrate.

THE COURT: It's ironic that the letter you wrote [5] him about the fee told him you were going to withdraw if he didn't pay it came about the time you found out you were—he attached that to his response here.

MR. LEVINE: Judge, early on, shortly after the arraignment, he didn't pay and I kept dunning him.

THE COURT: Oh, yes.

MR. LEVINE: Calling him. So the issue about nonpayment of fee was pregnant from the beginning and I waited and waited and waited and never did file that motion predicated upon that and that has nothing—

THE COURT: All right. You want to ask some questions now of the lawyer?

MR. CRONIC: Yes, sir, I have some.

THE COURT: Well, I guess you better be sworn then, Mr. Levine, take the witness stand and we will proceed with inquiry.

ARNOLD D. LEVINE,

having been first duly sworn, was examined and testified on his oath as follows:

THE COURT: Well, now, Mr. Cronic, are you going to do this yourself or are you going to have your lawyer do it? I appointed you a lawyer.

MR. CRONIC: Yes, sir. It was my understanding that this appointment was based on the end results of this hearing. That my attorney, Mr. Colston, would become effective after Mr. [6] Levine was or was not allowed—

THE COURT: Well, I'm sorry if you got that impression. I appointed him last week and made a written order and I intended everybody to get a copy of it. I don't know if you did or not. Did you get a copy of the order I entered?

MR. CRONIC: Yes, sir, I got a copy of it.

THE COURT: And it did as I viewed it contemplate maybe relieving Mr. Colston if Mr. Levine was retained. But go ahead, if that's your wish to handle interrogation personally, you may proceed.

THE CRONIC: Well, since Mr. Colston and I have not even discussed it with him—

THE COURT: Well, go ahead, let's proceed.

DIRECT EXAMINATION

BY MR. CRONIC:

Q Okay. I have here three additional—

THE COURT: Wait, sorry to interrupt. I think we should let the record show that the co-defendant last week and I don't believe it was on the record, it may have been, Carolyn Cummings indicated without stating a reason which I didn't require, indicated that she too believed that there is a conflict. That Mr. Levine should not represent both her and Mr. Cronic. If that was not made official in the record, it should be.

MR. LEVINE: Judge, she is here to reconfirm that.

[7] THE COURT: Yes. Go ahead.

MR. CRONIC: Your Honor, I have three additional letters here from Mr. Levine that I would like to give to you to make a copy of.

THE COURT: Well, let's wait and see—let him look at them and see if they are truly his letters and we will receive them properly.

MR. CRONIC: Fine.

THE COURT: Before I look at them.

Q (by Mr. Cronic) Here they are.

THE COURT: Let him look at them.

MR. LEVINE: I take it Your Honor would like for me to confirm if these are true or not.

THE COURT: Sure, I'm not going to look at them unless they're properly identified and received in evidence.

A There are three letters here, the first letter is dated March 7, 1980, and that letter is a letter that I wrote and has my signature.

There is a letter dated April 23rd, 1980, and that letter I wrote and contains my signature.

And a letter May 19, 1980, that I wrote and contains my signature.

THE COURT: All right. They will be received in evidence, such value as they may prove to be worth.

THE CRONIC: Your Honor, each one of the letters that [8] were just entered into the record are additional requests for sums of money concerning the defense of Cronic and Cummings indicated on the letters themselves. This is also in addition to the letters submitted in my brief to deny Mr. Levine's motion. That makes a letter dated March 7th, April the 2nd, April 23rd and May the 19th all requesting sums of money for defense of Cronic and Cummings.

Now, what Mr. Levine has said in his motion—

MR. LEVINE: Pardon me, Your Honor, I was under the impression he was going to ask me questions.

THE COURT: I think so.

MR. LEVINE: If he's going to argue the issues—

THE COURT: Right.

MR. LEVINE: —I think that's wholly inappropriate.

THE COURT: That is taken as an objection and sustained.

You go ahead. If you wish to argue, that will be done after the evidence is all in.

MR. CRONIC: All right.

I would like to ask Mr. Levine concerning the sums of money paid to him in the past and part of my motion that was filed with this Court, could he please explain to us what the total amount of $17,000.00 that was paid to his of-

fice was for between October the 16th, 1975, and June 25th, 1976.

A I represented the corporation, Skyproof, Incorporated, [9] Skyproof Manufacturing, in some civil matters. I represented—

Q Could you tell us what civil matters those were?

A Oh, at this juncture, I don't have any recall.

THE COURT: I think he attached that itemized statement, didn't he, to some—

A I think he did.

THE COURT: I think so. I got something here in the file that I recall having seen. Yes, here's a—well, wait, it may not be precise, but to save time I'll show you and you can see it here. Maybe this pertains to some of the things. This is an attachment to your earlier pleading in the case.

Now, go ahead, Mr. Cronic. If you want to look at it and see what he's look at there.

A Well, there's an Exhibit 2 that contains my signature. It's dated May 26th, 1978. You at some point in time requested that I account to you for the monies that were received and I indicated on this letter what that was. And as you will note, there was Internal Revenue Service matter which one of my partners went to Atlanta for—

Q (By Mr. Cronic) That was not during the time that I asked him the question concerning the funds.

A Oh, I'm sorry. What time did you ask about?

Q Between October 16th, 1975, and June 25, 1976.

The reason that this is important is that in your motion you have stated that no information was given to you [10] concerning Skyproof, that it was never discussed by me with you in any death whatsoever. If that is the case, I would like for you to tell us, please, for what purposes was this money—was this money given to you?

A Well, I can tell you specifically that it had nothing to do with your representation in connection with this criminal matter. Your position always was that you had not been involved in any fraud on any bank or anyone else in connection with Skyproof and the failure of that, Skyproof was attributable to the errors and failings of Mr. Merritt and to creditors who came down on you precipitously. And in con-

nection with the particular proceedings we learned early on that postal inspector Pugsley was investigating the matter. You said, you know, it's absurd, there's nothing about it. I had a couple of telephone conversations with Mr. Pugsley and he just said, well, we are investigating it. A subpoena duces tecum grand jury for some records that you turned over to me, corporate records, were in my office, Mr. Pugsley obtained them from me. And that is the sum total of the effort in any respect that I had insofar as Skyproof and the subject matter of this indictment which is Skyproof.

THE COURT: It is involved in this indictment before me?

A Yes, sir.

THE COURT: Skyproof? I didn't even—

[11] A Skyproof Manufacturing Company is the company involved.

THE COURT: All right.

A And if not all of the monies paid over the years, 95, 99 percent of the monies paid were related to representation unrelated to Skyproof except in one instance there was when Skyproof went out of business, there was a creditor somewhere out west, Georgia Pacific Company that owed Skyproof some money, I think it was in the neighborhood of some 40 odd thousand dollars and we collected that money and in turn transmitted a portion of it to your aunt, per your direction, since she was the named stockholder and retained the balance or the balance of the fee that was owed generally for other services rendered. But it was a collection matter as opposed to anything else. And I say Skyproof, it is conceivable that that company was Abraham Corporation, but unconnected with these proceedings, some corporate—involving a civil claim.

THE COURT: I think you have answered it.

Q (By Mr. Cronic) Yes, he answered it, but I would like to refresh Mr. Levine's memory. And that is that his statement concerning the transfer of funds from Georgia Pacific to my aunt had absolutely nothing to do with the Skyproof matter period. And that if his memory is failing him to that extent, that perhaps it's failing in additional areas. For the

simple reason that he's although given us a long explanation—

[12] MR. LEVINE: Judge, is he asking me a question? I object to—

THE COURT: Yes. Let's don't argue it until we get the evidence in, Mr. Cronic.

Q (By Mr. Cronic) Well, you still haven't answered my question. If I gave you $17,000.00 and you say it was for other things not to do with Skyproof, will you tell us what it was for?

A Well, in the first place, I don't know—

THE COURT: Wait, hold it, hold it just a moment. The young lady—

MISS CUMMINGS: I would like to say something, Your Honor. The first $13,000.00 in that letter I personally gave Mr. Levine. Now, they were corporate checks—

THE COURT: Well, here—

MISS CUMMINGS: And Mr. Cronic wasn't even involved.

THE COURT: Here, listen, listen, let me—I'm going to shut this hearing down. I'm not going to resolve the personal fuss between you. I don't think I'm called upon to do it, but I can see that there is indeed a conflict here. And what I am not going to allow to happen and I want you to understand that I think that I'm doing my duty, one in protecting your interest too and very intertwined, I'm not going to let the District Attorney sit here and grab any crumbs that might fall off of this personal fight to use against both of you [13] down the line. And I'm just going to, I may have to, after the trial is over, conduct a further hearing, I hope not, but I'm going to grant the application to withdraw of Mr. Levine. I have already appointed a lawyer to represent you. That is a final order. I'm not going to let this fight—it will likely get into areas that you may not realize may come back to haunt you next week when we start the criminal trial, both the young lady and you, Mr. Cronic.

MR. CRONIC: Your Honor, may I make a statement then?

THE COURT: Yes, you may.

MR. CRONIC: One other point that we failed to address here since the hearing has been stopped and one that was one of the reasons I was attempting to get to the point of the money paid to Mr. Levine and that is that Mr. Levine has stated that no client/attorney privilege information was imported to him under any circumstances whatsoever. I maintain that that is a complete lie. That the records will show that Mr. Levine's vagueness and attitude will reflect that and therefore information given to him during a five-year investigation can now be used against me.

THE COURT: Well, let me say that I'm not saying yes or no with respect to that. I find beyond any question that there is conflict right here and even hostility between you and the young lady, the co-defendant, between you and the lawyer and it's just inconsistent that he continue to be your lawyer in [14] view of that personal animosity. You see, what could happen down the line, you lose your case, you're going to accuse him of throwing in the towel because of his hostility, all kinds of implications can arise. And I'm sorry I have to shut down the hearing, but I don't think I have got any choice in my opinion. In so doing, let's be sure that I'm not ruling on which one of your statements is necessarily the truth. I'm just saying that I am persuaded beyond the purview of a doubt that there is a conflict between you and animosity between you and the co-defendant and it's impossible for anybody to proceed to try to represent both of you.

Now, go ahead, step down, that's the end of the hearing. I'm going to enter the order now.

I have got this case scheduled for trial next Monday. I wish that all of you could hang around until say, oh, around 2:00 o'clock this afternoon. What's happening, we don't have any member of the press here do we? Anything I say is public but I don't want this to be divulged to the news media, I hear that there's a good possibility that many of the defendants, maybe even most of the defendants in the next case, the Levine case, not this Levine, a local druggist accused of violating his license and wholesaling without prescription narcotics, that he might plead guilty. If so, that might change my plans. I at first told John Green yes-

terday we likely would not start this case until Monday week, I believe the 30th of [15] June. So let's talk about the actual commencement date this afternoon after we see whether or not there's going to be a plea in that case. I frankly kind of doubt it. I frankly believe it will go to trial, at least with respect to some of them, I believe there's five defendants.

MR. CRONIC: May I ask a question?

THE COURT: And that if so would permit me to continue that tentative date of the 30th of June.

Yes, you may.

MR. CRONIC: Two things here, Your Honor. One is I don't feel like that I could possibly get a fair defense giving my attorney one or two weeks to prepare for this when Mr. Levine has had the advantage of a five-year investigation, all the documentations, a complete review of all of that prior to my testimony before a federal grand jury in Tampa.

THE COURT: Here's the thing the Court's been confronted with, this case has been postponed a long time as it is.

MR. CRONIC: But that's not due to my fault, Your Honor.

THE COURT: Well, it was postponed under the application of Mr. Levine here that he's representing each of you and was engaged in trial in Florida. I thought about that and that's one of the reasons why I may just keep that June 30th as a firm date anyhow to give your lawyer that much more [16] time. And I am aware of the problem there and let's speak to that after we know what's going to happen in the 1:30 case. Would you be here at 2:00 o'clock then and I will—

MR. CRONIC: I will be here anytime.

THE COURT: All right, If all of you will report back to, not necessarily for a full hearing, but just to know what is going on in that case which will then allow me to be more specific on when we might start the actual trial of this one. All right. You may be excused then, all of you, until say 2:00.

MR. COLSTON: May I ask one question? I came prepared today as the appointed Counsel to ask for a continuance. May I present my motion for continuance?

THE COURT: Go ahead and leave it with the Clerk and let me read it and then I may want you to enlarge upon it later on.

MR. COLSTON: Very well.

THE COURT: Have you already filed it with the Clerk?

MR. COLSTON: No, I have not.

THE COURT: Why don't you do that.

(Whereupon, a recess was had.)

THE COURT: All right. Now, looking for Mr. Colton, the lawyer we appointed. Oh, here he is, I'm sorry, I didn't see.

John Green, is he here?

[17] MR. WATERS: Your Honor, he won't be in until tomorrow. I did talk to John last night about this case and his personal belief is that he has no objection to this continuance and request on a legal basis.

THE COURT: I think he might go stronger than that. He talked to one of my law clerks and as I understand, he kind of indicated that he thought it ought to be set over for a while. Let me ask some questions here. You have seen, I guess, that the drug conspiracy trial has just gone off. Every single defendant pled guilty and, you know, when I talked to you this morning I thought we might agree to get to your trial sooner than originally predicted, but I'm now inclined may be to even put it off a little more in view of what I head. Would there be any objection on the part of Cummings if we say postpone it another week?

MR. LEVINE: No, Your Honor.

THE COURT: It was scheduled to start Monday and then we tentatively decided on June 30. Now, then, we may be talking about still another week. Would there be any—

MR. LEVINE: So far as Miss Cummings is concerned, she would waive her right to a speedy trial and there would be no objection. Although insofar as I'm concerned, I would be prepared to go whenever Your Honor would schedule the matter. If you're going to be continuing the matter we

spoke about the prospect of a date of the week of July the 15th, but I don't [18] know what Your Honor's—

THE COURT: Well, let me ask—

MR. LEVINE: —calendar is in that regard. If I may be of some assistance to the Court, since I have been in the case for a good while the Counsel's just coming in, the documentation that the government has and has made available for examination, literally speaking, is at least a foot and a half high if not two feet high, that is the government's documentation in this case. And Counsel for Mr. Cronic has not as yet had an opportunity to see it no less digested. It constitutes hundred and hundreds of checks and thousands of entries and some of the witnesses in the matter are witnesses from Florida, from the Tampa community, and some witnesses are local here.

I would respectfully submit to Your Honor that if Counsel for Mr. Cronic were to devote all of his working days, he might be able to be ready in 30 days, might be, if he were to devote all of his time just to this case.

THE COURT: I'm sure he's going to be beholden to me for selecting him. Of course, he was taken off the alphabetical lit, I haven't met the gentleman before I talked to him on the phone and I am grateful to you for accepting this assignment.

I don't have your application before me, is there a time frame mentioned in it?

[19] MR. COLSTON: No, Your Honor. I would respectfully request a minimum of 30 days. I did have the opportunity yesterday, Mr. Green cleared me to at least view the files at the postal inspector's office. And Counsel does not misstate the facts, it is at least one and a half feet—

THE COURT: Well, let me cut you a few days short there. I'm going to grant this, despite the fact the case has been delayed a great deal beyond this, but, it's not your fault. Our July docket starts on the 14th of July, that's just a couple of days short, so why don't we set it firm, firm setting to start Monday, July 14th.

MR. LEVINE: Judge, might I ask in that respect if your Honor would consider Tuesday the 15th. I'm lecturing in a criminal seminar that's been scheduled for several months.

THE COURT: I'm sorry, I just can't do that. See, all our Jurors are already summoned to come in that 14th and I'm sorry. Let's just fix it firm at that time and you will have to plow around and get somebody else to lecture for you or postpone it.

MR. WATERS: I think that's a good decision, Judge. The 14th, the government will be ready and I think that gives enough time—

THE COURT: Let's alert all of you now to get your dockets cleared so that there will be no conflict with any of you to be here and ready to go to trial on that morning at 9:30.

[20] MR. WATERS: And as far as the discovery matters, I want the record to reflect I talked to Mr. Pugsley just no later than about an hour ago and Mr. Pugsley is ready to meet with you at your convenience and provide all the documentation and discovery that the rules permit and certainly more than the rules permit, I'm sure.

THE COURT: Well, while you fellows are so agreeable all around here, why don't you go in and have a little short conference and then come out here for a longer one and work this thing out by either a dismissal or plea bargain or something.

MR. WATERS: Well, Your Honor, I might just say for the record that although this is not my case, as the Court knows, I have been in some discussions on that matter at least with Mr. Levine regarding his client and I think that Mr. Levine would say that when Mr. green gets back in town tomorrow—

THE COURT: You say there's a possibility?

MR. WATERS: —there is some possibility.

THE COURT: The Jury is not here. Well, good.

MR. WATERS: We may be able to work something out. At least I've talked to Mr. Pugsley who's the case agent and we have initiated some discussion in that regard at least as it relates to the Defendant Cummings.

THE COURT: Now, it's a fair statement to put into this record the motion is granted at the request of the Defendant Cronic, not objected to by the co-defendant, as a [21]

matter of fact, Mr. Levine on her behalf specifically waived her speedy right—speedy trial right, and Counsel for the government not only does not object, but acquiesces in the postponement because of the volume of work necessary to get ready. All right.

MR. COLSTON: Your Honor, may I inquire of the Court, is this setting of a trial date impair my rights in any way to file motions in terms of hiring an investigative assistant?

THE COURT: Oh, wait a minute. No, no, no. I'm going to grant you the right to file motions like that. I don't believe I'm going to open it for you to file the regular other motions, motion to suppress or that sort of thing. But, yes, sir. And, incidentally, if you haven't already done so, you should sign an Affidavit in Forma Pauperus, you told me a week or so ago you would have no problem.

DEFENDANT CRONIC: Correct.

THE COURT: So that he can get paid and then you intend to file a motion maybe for the help of an investigator?

MR. CRONIC: Yes, sir.

THE COURT: Get it in as quick as you can and try to select your own, somebody that you got confidence in. There is one man I wouldn't appoint under any circumstances, privately I will tell you who it is and I have known him for a long time and he's not honest. So, I wouldn't appoint him.

[22] MR. COLSTON: I think my most pressing assistance needed right now would be of an accountant. I believe the government saw fit to hire two and I am certain that Mr.—

THE COURT: I wouldn't hesitate to grant it. Unfortunately, though, as you may not know, Mr. Levine likely does, $300.00 is the most we can pay and that doesn't get much accounting but it's better than none, I guess.

MR. LEVINE: Judge, for the record, on behalf of both defendants, I have filed not only the usual but some unusual pre-trial motions.

THE COURT: Right, and Judge Daugherty ruled on all of those.

MR. LEVINE: Yes, he has. And I don't know of any motion that was not filed on behalf of all the defendants.

THE COURT: Well, I'm not opening it up. Now, I appoint this man and it is an imposition, I know it is, somebody's got to do it and grateful for you for doing it. I will help you to that extent, get you some investigative aid but not open it up, you know, for all the motions. I'm grateful that Mr. Levine—Levine or Levine?

MR. LEVINE: I call myself Levine.

THE COURT: Well, the other gentleman spelled his like yours but he wants to be called Levine.

MR. LEVINE: Levine.

THE COURT: All right. Certainly he will help you [23] in any way he can and the Court is grateful. And, yes, I'll look for the application to appoint an investigator and promise you that I will grant it. I do reserve the right to reject this one person that I will tell you the name and probably you wouldn't want to select him anyhow, but otherwise just kind of leave it to your discretion who to appoint and we will do that forthwith.

MR. CRONIC: Your Honor, may I ask a question? I have spoken with my court-appointed Counsel here, he's been most helpful. However, I would like to bring up one point. His specialty is real estate law, he's only tried—has been involved with one federal criminal case in his entire legal experience. The American Bar Association presently recognizes a hundred and fifty-eight specialists under the—

THE COURT: If you're getting around to saying you want to select your own lawyer, no way. You have got a good lawyer and if you want your own, you go hire your own. This man was appointed under our system. We select qualified lawyers, he's qualified or I wouldn't have appointed him. He's very bright and he was appointed from an alphabetical list of all of whom are screened and we just don't do it any other way in this District. So you—

MR. CRONIC: That is denied.

THE COURT: —if you're getting around—it absolutely is.

[24] MR. CRONIC: Yes.

THE COURT: If you're wanting more lawyers, you've got a good one as it is.

MR. WATERS: Thank you, Your Honor.

THE COURT: All right.

* * *

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

Case No. CRF-80-21-E

UNITED STATES OF AMERICA, PLANITIFF

v.

HARRISON P. CRONIC, DEFENDANT.

**TRANSCRIPT OF PROCEEDINGS
HAD BEFORE THE HONORABLE LUTHER B. EUBANKS
IN OKLAHOMA CITY, OKLAHOMA
ON JULY 14, 15, 16, AND 17, 1980**

APPEARANCES:

MR. JOHN GREEN, Assistant United States District Attorney, Federal Building, Oklahoma City, Oklahoma, appearing on behalf of the plaintiff.

MESSRS. CHRIS E. COLSTON and RYLAND L. RIVAS, First National Building, Oklahoma City, Oklahoma, appearing on behalf of the Defendant.

* * *

[87] THE COURT: All right. The Defendant may reserve it until the government has rested or make it now. Which do you prefer, Mr. Colston?

MR. COLSTON: We'll make our statement now.

THE COURT: Make it now. Go right ahead. You may make the opening statement for the Defendant. This is Mr. Colston and I introduce him to you this morning. Go ahead.

MR. COLSTON: Ladies and gentlemen of the Jury, you have heard Mr. Green state that the government has alleged a corporation known as Skyproof Manufacturing was a sham, a fraud and a pretense. We will prove to you with the government's own witnesses that that allegation is totally false. With the government's witnesses. The government's alleged a conspiracy between three defendants. They say this conspiracy was to defraud banks. They further state that at the time of this alleged conspiracy, the defendants could not cover overdrafts, that they didn't

have the intent to cover overdrafts. I will prove to you my client could have covered overdrafts but since he wasn't involved, why ask for the money? Therefore, he had no intention to defraud anyone.

I think you will find that after you hear the evidence, the only reason there were overdrafts it's a combination of either greed or incompetence on the Norman Bank of Commerce, a shambles of record systems at Skyproof which Miss [88] Cummings kept.

The proof will show that Norman Bank of Commerce went along with these overdrafts if not weeks at least days. I think the evidence may show months. The proof will show that they went along with these overdrafts because the account was so good, they're making money off of it. It's one of the best customers. And in a five-month period nearly $5,000,000.00 in good funds went through that account. You don't run that business off.

I think the proof will show that the funds we're talking about are so large that the overdrafts are going to be compared to say $500.00 account with $50.00 overdraft. That's how much money was in that account.

Now, the proof is going to show that Harrison Cronic had more than sufficient funds or access to sufficient funds to cover those drafts. That's important. He could have done it. Why? He wasn't involved.

The proof is going to show that he had no connection with the ownership of Skyproof. He couldn't have written a check on that account if he wanted to. Every check is going to be signed by Miss Cummings or Mr. Wylie Merritt. Not only could he not write a check on that account with no ownership position, wasn't a stockholder, wasn't an officer, he couldn't force anybody to do anything.

Now, the government is going to try to show that Mr. [89] Cronic controls Skyproof Corporation. And I think you're going to hear some government witnesses that are going to testify to that effect. But listen to what they say, what they say they believed back then and then look at what they did when it came down to do business with Skyproof. They didn't want Mr. Cronic's signature, they wanted Mrs. Cummings. He could negotiate all he wanted,

he was an operations officer, he should be able to, but his negotiations were totally worthless until he went to the officers of Skyproof, Carolyn Cummings, and got those documents signed.

Now, the government's going to show or try to show that the three defendants set up bank accounts that they all assigned or controlled. We're going to prove to you that Mr. Cronic didn't touch those accounts. Therefore, how did he assign them? How did he control them?

There's going to be testimony or at least allegation that Mr. Cronic somehow mystically controlled Carolyn Cummings. But I want you to look at the evidence when you get to the crucial point of this case, Harrison Cronic was trying to advise her. She totally ignored him, did the opposite of what he advised. She sold the corporation. Is that control?

I think when we get through here, I will have shown that there was no real crime committed. Due to the size of this account, the Norman Bank of Commerce was doing nothing [90] more than making loans really. When it got too big they immediately got security, not from my client Mr. Cronic, but from Skyproof and Miss Cummings individually. Didn't even talk to Mr. Cronic about signing on the line. Why? He didn't own it. He didn't control it.

The evidence will show that the Norman Bank of Commerce either knew or they should have known from the time of the first overdraft but they kept going along with it, they went along with it. When they got scared, when it got too big for them, they got security. And they're going to have to admit to you that they're secured on paper because you're going to see it. You're going to see a note. Where is it going to come from? My client, Mr. Cronic? No. It's going to come from Skyproof Manufacturing. Another corporation you will hear about is Paris Processing, which was wholly owned subsidiary. They had to sign the note, Carolyn Cummings signed the note individually. Did they come to my client? No. Then they're going to have the nerve to sit here and tell you that they knew Mr. Cronic was the true power and owner.

I want to remind you again that the evidence that Mr. Green's alluded to you already will show approximately $5,000,000.00 of good funds went through this account in five months. Norman Bank of Commerce will have to tell you that they don't have very many customers like that. They need to keep them. They will tell you that they're able to loan [91] against a certain portion of that money.

Now, as I stated earlier, there is an allegation of conspiracy here. The evidence will show that there was a Telex machine installed at Skyproof plant, there was a Telex machine installed in Paris, Texas, at Paris Processing, there was a Telex machine set up across the hall from Mr. Wylie Merritt in the office of an employee whom Mr. Merritt hired. Why, if there is a conspiracy, why do you bring in outsiders?

Now, again, the government would harp on the fact and try to prove that Skyproof was not a going business. We will show you that once Skyproof was purchased by Carolyn Cummings, then is when it went to the number one in the State of Florida in the manufacture of mobile home trusses, not the other way around, as you previously heard.

The Norman Bank of Commerce is going to be screaming that it was a sham corporation. But when you hear the testimony from the government's witnesses, the Norman Bank of Commerce president, the attorney from the Norman Bank of Commerce who is a very very fine attorney, you're going to see that the best aspect of Skyproof Manufacturing known as Paris Processing has been owned by the Norman Bank of Commerce or some of its Board of Directors for five years.

MR. GREEN: Just a moment. The Counsel is geting into argument instead of statements now. I object to it.

[92] THE COURT: Oh, it's borderline, but he's outlining what he's expecting to prove. Go ahead, Counsel.

MR. COLSTON: Now, you're going to hear Mr. Cronic's name tossed around here a great deal. Not one document will you see has his name on it. Not one. So when people say we believe he was in control, listen to them, that is your obligation and look what they did. The truth of the matter is the Norman Bank of Commerce, its president, its

attorney, will be forced by me to testify that Mr. Cronic has never owned that plant, otherwise they owed him the money for the last five years.

I appreciate your attention. I apologize if I had to read from notes, but this is my first trial and I hope you will just bear with me.

Thank you.

THE COURT: Thank you. All right. Mr. Green, call your first witness for the government.

MR. GREEN: Mr. Kuwitsky.

VERNON KUWITSKY,

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court, please?

A Vernon Kuwitsky.

[93] Q And where do you reside?

THE COURT: Keep your voice up a little, it must carry to Defense table and back there. Go ahead, sir.

A 424 Sundown Drive, Norman, Oklahoma.

Q (By Mr. Green) And, Mr. Kuwitsky, what is your profession or occupation before you retired?

A I was a banker.

Q Which bank were you connected with?

A First National Bank & Trust Company, Norman.

Q How long were you with The First National Bank & Trust Company?

A Thirty-one years.

Q And is the First National Bank of Norman located in Norman, Oklahoma?

A Yes, sir.

* * *

[96] MR. GREEN: Your Honor, we would like to offer government's Exhibit 1-A and 1-B.

THE COURT: No objection is heard, they will be received.

* * *

[103] A Well, it was pretty clear that they were kiting between Norman and Tampa, Florida.

Q What is kiting in banking terms?

A Kiting is where you draw an item on one bank and deposit it on another all at the same time, reversing the operations. and it works pretty smooth until one item reaches the bank ahead of the deposit, then it has a tendency to back up. When checks start returning, it will generally end up overdrawing one account or the other and that happened in our bank on two different occasions until I talked to Mr. Wylie and told him we couldn't handle items like that anymore.

THE COURT: Mr. Witness, that's common talk for you. You see it every day or did and it's kind of foreign to us. Could you be more explicit, maybe put it on the board up there, this kiting?

A Kiting, well, like this deposit was made at our bank with checks drawn on the Tampa, Florida bank. I'm sure at that time or in a day or two a similar deposit was made in Tampa, Florida, maybe not the same amounts, but at the same time drawn on us. Well, when the checks from Tampa reach us, if enough good money is on deposit, the item is paid and everything is fine. And the same thing is true if it reaches Tampa and good money is on deposit. But if one account or another doesn't have enough money in it, then one of those checks is going to return. Now, the thing about a kiting [104] operation is they had the use of the money and what we call in banking terms, float, these items are floating between our bank and the Tampa, Florida, and back again. Well, the time it takes a check from Norman to Tampa and back is a week or ten days. Now, a lot of things can happen in a week or ten days with a bank account. We call that kiting.

Q (By Mr. Green) Does this particular kiting create an inflated balance in a particular bank?

A Well, it creates an untrue balance because it's not collected funds. Banks have a habit on good accounts of giving credit to the customer at the time he makes the deposit when actually the bank doesn't receive the money until the items you deposit have cleared. And as long as a bonafide

operation, it's all right, because the bank will get credit for it in a day or two. But when we clear this item on a bank in Oklahoma City, we're not getting immediate credit for it until they get some money.

* * *

[105] MR. GREEN: You may cross examine. Excuse me, I have one more.

When you have such credit funds in their account, from this check kiting you have described, would those be considered as good solid funds, sir?

A No, sir.

MR. GREEN: You may cross examine.

THE COURT: Go ahead, Mr. Colston, cross examine.

CROSS EXAMINATION

BY MR. COLSTON:

Q Mr. Kuwitsky, you have indicated that you talked with Wylie Merritt, is that correct?

A That's right.

Q On how many occasions?

A Well, twice that I know of. First time at the short I called him in and asked him to cover the overdraft, which he did. Now, I don't know what he deposited that time, he just ran it through the teller's window.

The second time it happened, I checked it a little closer and called him over and told him that we couldn't handle those items anymore, that we would have to handle them [106] as collection items.

Q All right. Did you ever talk with Carolyn Cummings?

A Who?

Q Carolyn Cummings.

A No, sir.

Q Do you know who that is?

A I do now.

Q All right. Is she the one who signed those checks from Skyproof?

A Yes, sir.

Q Did you ever talk with Harrison Cronic?

A No, sir.

Q Did he sign any of those checks in front of you?

A No, sir, not that I know of.

* * *

[134] MR. GREEN: Mr. Briscoe.

WILLIAM L. BRISCOE,

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court and Jury, please?

A William L. Briscoe.

Q Mr. Briscoe, by whom are you employed?

A Executive Courier Service, Inc.

Q How long have you been there?

A Approximately a year and six months or so.

Q And where were you employed before you went to work for Executive?

A Fidelity Bank.

Q Fidelity Bank? Is that located in Oklahoma City?

A In Oklahoma City.

Q How long were you with Fidelity?

A Approximately nine to ten years, about ten years.

* * *

[148] CROSS EXAMINATION

BY MR. COLSTON:

Q Mr. Briscoe, would you tell me again what your title was at Fidelity Bank?

A Vice President/Director of Data Preparation?

Q All right. Some of those exhibits in front of you are signed by A. D. Dunn, are they not?

A Yes, sir.

Q Who is A. D. Dunn?

A Well, I'm sure I don't know the person individual, but the postal department person that picks up the particular parcel is the person that signs that.

Q Have you signed any of these receipts anywhere?

A No, sir.

Q Who was W. L. Countz?

A Who?

[149] Q W. L. Countz.

A He would be the person from the postal department that picked it up.

Q Did you open each envelope or pouch and see what was in it?

A No, sir.

Q Did you ever open a pouch to see if these checks were in any of them?

A No, sir. Now, these were checks that we were sending out so we would have packaged them up.

Q Did you ever personally see those checks go in the pouches?

A No, sir.

Q Did I hear you say there were times when Fidelity Bank did not use express mail?

A Yes, sir.

Q You never saw those checks go in pouches, did you?

A I never saw these checks go into pouches.

Q You haven't signed these documents anywhere, have you?

A No, sir, I have not.

Q Has anyone at Fidelity Bank signed these documents?

A No, sir.

Q You cannot sit there personally and tell me you know those checks were in pouches, can you?

[150] A No, I cannot.

MR. COLSTON: No further questions, Your Honor.

* * *

[167] HAROLD L. HEIPLE,

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name for the Court and Jury, please?

A My name is Harold Heiple.

Q And, Mr. Heiple, by whom or what is your occupation or profession?

A I'm an attorney at law and I practice in Norman, Oklahoma.

Q How long have you been practicing law in Norman, Oklahoma, Mr. Heiple?

A I have been practicing in Norman since 1962.

Q And do you have any connection official with the Norman Bank of Commerce?

A Yes, sir, I was the organizers of the bank and I am the bank's lawyer and I'm also on the Board of Directors of the bank.

* * *

[171] Q All right. What, if anything, did Mr. Cronic then do after opening that particular meeting with a prayer in the lobby of the Marriott Hotel?

A In the course of the prayer, he made reference to financial requirements and needs of all the parties and when he finished the prayer, I said, "Mr. Cronic, what I'm interested in, is where is the Norman Bank of Commerce's half million dollars?" And in the course of the conversation, he represented to Mr. Bumgarner and to me that he really didn't know where it [172] could be, but certainly it could be accounted for because his company, Skyproof Manufacturing, was a very prosperous and very active company. And he made the statement, he said, I have got over half a million dollars in paid assets and that someway, whatever happened, they would find out and certainly make it good.

Q Did he ever make it good to this day?

A No, sir.

Q All right. Was there any other conversation—getting back to the Marriott Hotel lobby there in Dallas near I-35 and North Dallas.

A The rest of the conversation was consumed with Bumgarner and I trying to find out something about Skyproof Manufacturing and Mr. Cronic from him and from Mr. Merritt and what we got was a lot of conversation which was filled with glowing statements by Mr. Cronic about the

condition of the company and his own personal net worth and how he promised that nothing would happen and nobody would suffer a loss and nobody had stolen anything, or done anything wrong.

At that point in time, because we were in Dallas, Texas, and didn't have access to the books, there was not anymore we could really do. The meeting broke up with the promise that Cronic and Merritt would make every effort to ascertain what had caused this problem and see that—locate the money and make sure that there was no loss to anyone.

* * *

[174] Q All right, sir. And did you ever in your investigation as the attorney for the Norman Bank of Commerce, have any figure as to the amount of the loss involved in this experience with Skyproof?

A It was approximately half a million dollars.

Q All right, sir. And what was the condition of the bank after this particular incident?

A Well, the bank was hanging on by its fingernails. It was only because we were able to convince the banking authorities who were there with us on a daily basis who we had immediately called in and advised of the bank's condition that we were able to keep the bank open. Because the capital [175] structure of the bank at that time was only a million and two hundred thousand. And—but it was with the concurrence of the regulatory authorities, both FDIC and the people from the Oklahoma State Banking Commission that we were able to keep the door open. But it was frankly for a period of two to three weeks very questionable about whether or not they were going to put a padlock on the door.

Q All right, sir. Now, did you ever at any—you stated that you did not see Mr. Cronic anymore after you met him that day in Texas, October 12th, 1975?

A That's correct.

Q All right. Until you saw him, of course, in here today?

A Yes, sir.

Q All right, sir. Now, with reference to the matter of the Skyproof Manufacturing Company and the losses that

were associated with it, did the—did you have any hand or have any experience or of any type of security to try to lessen or recoup some of your losses there at the bank?

A Yes, sir. I went to Tampa, Florida, in about the 22nd of October, about ten days after we had this meeting in Dallas and I made contact there with Carolyn Cummings who at that time was holding herself out to be the president of Skyproof Manufacturing and an attorney named Arnold Levine. I went to the plant of Skyproof which was located outside of [176] Tampa and I was there with this premise, saying to these people what I want is money, what we're trying to do is save this bank, I don't really care about anything else, but I'm trying to recover the money and save this bank. We started negotiations. I went down with the hope of coming back with a mortgage on any and all assets that I could lay my hands on. I did not come back with anything. However, as a result of the negotiations that were started, we kept going and in November of that year, we got a mortgaged signed on virtually everything they claimed to have, which included a bottling plant in Paris, Texas, and this Skyproof Manufacturing Company down in Florida, an automobile and the various personal properties, equipment, that was there. IT was to secure what had been figured out as the ultimate loss that the bank had sustained. And if I recall correctly, Mr. Bumgarner can give you the figures exactly, I believe it was $484,000.00, approximately. Now, this was the amount of the note and mortgage that we got. And that note and mortgage was signed by Skyproof Manufacturing and by Paris Processing, Incorporated, a corporation that claimed to have title to the bottling plant and by Carolyn Cummings, individual. It was not signed by Mr. Cronic.

* * *

[178] Q All right. Did the Norman Bank of Commerce ever take over the operations of the Paris Bottling works?

A What the Norman Bank of Commerce did was when I found out that that day, I got on the telephone and I called Bob Bumgarner, the bank president in Norman and I said, there is an emergency down here, they're bleeding and stripping this thing, you got to throw out the directors and

the officers of the bottling plant immediately. So based on my advice, the bank had acquired the right to vote the stock, the corporate stock of Paris Processing, Inc., which was a corporation that owned this bottling company. Based on my advice, we convened a special meeting of shareholders of Paris Processing and at that point we threw out the Board of Directors of Paris Processing which consisted of Carolyn Cummings, I don't remember whether Mr. Cronic was listed as a director or not, but other employees of their Florida operations. And Carolyn Cummings happened to call and we elected three independent directors. Now, these were not bank people who were elected as directors, the three people who were elected directors were residents of Norman, Oklahoma. They were Don Stover who is a CPA, Bob Dill, who had been the attorney originally involved when Mr. Cronic acquired the bottling plant down there and Joe Langford, another lawyer. So we put these three—we voted these three people in as directors of the bottling plant which gave them technical control of it and they tried to run the bottling plant [179] for a period of time pursuant to this note and mortgage which we had taken from them in November. And out of the 480 something dollars on the mortgage, I think a total of $9,000.00 may have been paid. The bank's records will reflect any exact amount.

So finally in March of 1977, the bank had no choice and the bank examiners, we had to foreclose on that note and mortgage on the bottling plant in Texas. Which we did. And the bank, even though it had originally taken a 480 something thousand dollar note signed by Carolyn Cummings and Skyproof and Paris Processing, the bank examiners had forced all of that to be charged off immediately except $170,000.00, that is the only amount they would allow to be retained, even though we had a note and mortgage on the bottling plant and supposedly the Skyproof Manufacturing Company plant in Paris and a couple of automobiles.

* * *

[188] [CROSS EXAMINATION]

Q Mr. Heiple, I hand you what has been marked as Defendant's Exhibit 1. Would you tell us the date of execution, please?

A Yeah, it's dated November 28th, 1975.

Q So we're talking six weeks later then of your first [189] belief?

A Yes, sir.

Q Would you tell the Jury who the maker of that note is?

A Maker of the note is Skyproof Manufacturing, Incorporated, a corporation, signed by two officers and also Paris Processing, Inc., a corporation, signed by two officers and also Carolyn Cummings, individually.

Q Does the name of Harrison Cronic appear on that note?

A No, sir, it does not.

Q Did you prepare the mortgage also?

A Yes, sir.

Q Would it be reasonable to assume that it was made the same way?

A Sure it would be.

Q So who were the mortgagors?

A Pardon?

Q Who were the mortgagors?

A Skyproof Manufacturing, Inc., a corporation and Paris Processing, Inc., a corporation, and Carolyn Cummings, individually.

Q Did the name Harrison Cronic appear as a mortgagor?

A No, sir, not anyplace either in this note or in the records of property owned that we were trying to get.

[190] MR. COLSTON: Your Honor, I object, that's not responsive to my question.

Q (By Mr. Colston) Would you tell the Jury, please, what maker of the note means?

A Maker of the note is the person who signs the note who is one or more of the persons who promises to pay the debt that is declared to be due.

Q I believe you indicated Skyproof Manufacturing was one of the makers?

A That is right.

Q Who signed on behalf of Skyproof?

A Carolyn Cummings as president and Betty Allan signed it as secretary.

Q I believe you indicated that Paris Processing was one of the makers of the note. Can you tell us who signed for Paris Processing?

A Carolyn Cummings signed as president and Betty Allan as secretary.

Q I believe you indicated there was an individual.

A That's right, Carolyn Cummings individually.

Q And a mortgage is given as security for the note, is it not?

A That is correct.

[191] Q If there is a default in the note, the holder of the mortgage has something to go back on, do they not?

A If the security is worth anyting.

Q Okay.

A And if they're first.

Q You put the amount in the note, did you not?

A The amount that the bank was out in its loss, that is the amount of—that's how the amount of the note was arrived at.

* * *

[194] Q All right. Did at any time the Norman Bank of Commerce receive the voting rights to the stock in Paris Processing, Inc.?

A Yes. when the note and mortgage were given to them in the mortgage of November of 1975.

Q Was Paris Processing, Inc., a wholly owned subsidiary of Skyproof?

A Yes, sir.

Q Who executed the transfer of the voting rights?

A Well, they were contained in the mortgage which was signed by, among others, Carolyn Cummings and Betty Allan of the corporate officers of Skyproof Manufacturing.

Q Did Harrison Cronic execute that transfer?

A No. Harrison Cronic's signature isn't on anything.

Q Did Carolyn Cummings execute that in her individual capacity or corporate capacity or both?

A Well, she executed it in her individual capacity and Skyproof Manufacturing executed it and she signed a corporate officer of Skyproof.

Q Did you have any reason to doubt she was president of Skyproof?

A Not to doubt that she was president of Skyproof, I certainly doubted that she was—

MR. COLSTON: Your Honor, I object, that's not [195] responsive.

THE COURT: Well, he's going beyond, he's answered the question.

Q (By Mr. Colston) So Mr. Cronic has not executed the note, he didn't execute the mortgage, didn't execute the stock transfer, is that right?

A He didn't have to.

Q Is that correct?

A Is what correct, now?

Q Is the question—

THE COURT: Yes, it is repititious. He didn't sign anything. That's already clear, Counsel.

Q (By Mr. Colston) You didn't feel he had an interest to be divested, did you?

A Why, I knew he was in control of the thing, there wasn't any doubt about that. You don't have to be the president or director in order to control what a corporation does.

Q As a part of the stock transfer process that you as an attorney for Norman Bank of Commerce require a resolution of the stockholders or the board of directors of Paris Processing?

A Not of the stockholders of Paris Processing, no.

Q Board of Directors?

A No, sir. No, we had ascertained we were getting all that we could get and we had to take what we could get or have the bank examiner say come up with the dollars.

[196] Q Did you as attorney for Norman Bank of Commerce require a resolution from the Board of Directors and stockholders of Skyproof for the stock transfer?

A No, sir. It was contained in the mortgage.

Q Did the Board of Directors sign that mortgage?

A No, no, the Board—did the Board of Directors sign the mortgage? Carolyn Cummings signed the mortgage as member of the—in her capacity that she was a member of the Board of Directors as well as president.

Q Was she the only member of the Board?

A No, she would not have been the only member of the Board.

Q Was she the only stockholder?

A Of what?

Q Skyproof.

A Carolyn Cummings was the only one whose name was listed according to them as a shareholder of Skyproof.

Q Is she the only one who executed the stock transfer?

A There wasn't any stock transfer, it was all contained in the mortgage.

Q So any power that went with the stock was in that mortgage?

A That's right.

Q And that was just voting rights, is that right?

A The mortgage is about as broad and inclusive as I [197] could draw one, it gives us everything from soup to nuts.

Q If you have the voting rights on stock, you in essence control that stock, don't you?

A If we had the voting rights?

Q If you just—

A Whoever—

Q —as a theoretical question—

A Whoever controls voting rights obviously controls stock, certainly.

• • •

[200] Q (By Mr. Colston) Mr. Heiple, to the extent possible, we just try to pick up where we left off yesterday.

A All right, sir.

Q Who owned prior to November 28, 1975, the stock of Skyproof?

A Prior to November of '78?

Q '75.

A '75? If I recall correctly and I never examined the records, but according to what information I had I believe that all of the stock of Skyproof was issued in the name of Carolyn [201] Cummings. I never saw all of that stock, so I cannot verify it.

Q Yes, sir. Isn't it true that the stockholders of the corporation elect the Board of Directors?

A That's correct, sir.

Q Isn't it true that Harrison Cronic was not a member of the Board of Directors of Skyproof?

A I believe that is true.

Q Isn't it also true that as long as one person owned all the stock of the corporation that one person can do anything with the corporation that person wants?

A Yes.

* * *

[202] Q Would you tell the jury when the first payment was to be made on that note?

A Well, it's expressed in the terms of the note. It was to be paid in twelve separate and semi-annual installments, the first one was due on June 1, 1976.

* * *

[203] Q —is that correct? Isn't it true that Carolyn Cummings and Skyproof set in exactly the same position as the Norman Bank of Commerce did with reference to Paris Processing?

A I don't think so.

Q She owned all the stock, didn't she?

A No, I don't believe that she did. Her name was the listed stock—the only one listed as the stock owner. I [204] believe Mr. Cronic was in fact the true beneficial owner of the stock.

Q Who was on the stock certificate?

A Miss Cummings was the only one on the stock certificate.

Q Who transferred the voting rights to—

A Miss Cummings was the only one who signed all the papers involved. Mr. Cronic's name, signature does not appear anywhere.

* * *

[227] JAMES L. WILLIAMS

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN

Q State your name to the Court and Jury please.

A James L. Williams.

Q Mr. Williams, by whom are you employed?

A Metropolitan Bank and Trust Company in Tampa, Florida.

Q And in what capacity are you employed with the Metropolitan Bank & Trust Company of Tampa, Florida?

A I'm vice president in charge of branch coordination which includes all the operations of the branches.

* * *

[235] Q How did you become concerned or involved in this?

A Somewhere in mid-to late September, again, I had just been employed by the bank for a short period of time, I had a general meeting with all of our people involved in operations, including our bookkeepers, tellers, and proof department. And one of the things that we or that I particularly covered at this meeting was how they individually could be alerted for the type of transactions which in banking is referred to as kiting, how that could be detected in the various departments. So as if that should ever occur, so that we would catch it and our bank would not lose any money. If there is a kiting or I should say if there is an overdraft or an overdraft created by a check returned to

your bank by another bank and charged back to your customer's account, there is no insurance on that, it's absolute loss and has to be written off.

Q All right.

A And early in October, in fact, October the 6th to be explicit, '75, one of the people in our bookkeeping department brought me a transactions that day consisting of checks—I'm sorry, deposits being made to the Skyproof Manufacturing account, 00773 as well as all of the checks that we had in our bank file at that point and in effect, queried me as to whether or not this might be a kiting scheme.

Q What was your opinion after that?

A My immediate opinion was that it definitely was and [236] I immediately began returning all of the checks that we had in the bank to secure our position.

Q And when you say you returned all the checks, to whom did you return these checks?

A We returned the checks that were to the bank of last deposit.

Q Which would have been the Norman Bank of Commerce?

A Well, there were—there may have been other checks in there that were payable to other people. Again, I don't—I would have to look through these to see what might be in there. But there were a number of checks that went back eventually to the Norman Bank of Commerce. We returned them to the Federal Reserve Bank in Jacksonville since that was the way we had received them for payment.

* * *

[256] CROSS EXAMINATION

BY MR. COLSTON:

Q Mr. Williams, you have a large volume of checks in front of you there, do you not?

A That is correct.

Q Would you just thumb through there and satisfy yourself who signed each and every check?

A For the entire group?

Q Just thumb through and see if you see anything different.

THE COURT: To save time, I believe it's agreed that they're all signed by Carolyn Cummings, isn't that right?

MR. GREEN: Yes, we stipulate that they're all signed—

THE COURT: That's the point you want to make, I'm sure.

A I make the comment that they're not all signed by Carolyn Cummings. There are facsimile signatures that are a facsimile of Carolyn Cummings signature.

Q (By Mr. Colston) All right, sir.

A I do not know whether she applied that facsimile signature.

Q You have talked this morning about a contract resolution, have you not?

A That is correct.

[257] Q Do you have that with you?

THE COURT: Maybe the Clerk has it here.

MR. COLSTON: It's not been offered into evidence.

MR. GREEN: No, sir, we haven't offered it.

A I'm sorry, Your Honor, I don't.

THE COURT: Do you find it there, Mr. Green?

A MR. GREEN. I gave you copies of those, I believe, last night as well.

Wait, I'm sorry, I have them.

Q (By Mr. Colston) I have handed you what has been marked as Defendant's Exhibit 3, have I not?

A That is correct.

Q Would you identify that for the Court, please?

A This is the contractual resolution between the Skyproof Manufacturing Incorporated, Account No. 007765, which is not as being the payroll account which account was opened on April 22nd, 1975, in the initial deposit of $50,000.00.

Q Does it show an authorized signature?

A Yes, sir, it does.

Q Who is that?

A Carolyn S. Cummings, president.

Q Thank you.

A Would it be pertinent to describe the reverse side which is the articles of resolutions by the Board of Directors?

Q Please do.

[258] A This was a resolution of the Board of Directors of Skyproof Manufacturing passed on April 14th, 1975, authorizing one signature signing on the account. The secretary was a Larry V., as in Victor, Howell, Carolyn S. Cummings signed as certifying the foregoing as a correct copy of a resolution adopted at that meeting.

Q I have handed you what is marked as Defendant's Exhibit 4. Would you identify that for us, please?

A This again is a contractual resolution between Skyproof Manufacturing, Incorporated, and Metropolitan Bank of checking account No. 007773 with the authorized signer being Carolyn S. Cummings, president. Reflecting the account opened on April 22nd, 1975, with initial deposit of $50.00.

A resolution was passed at the Board Meeting of Skyproof Manufacturing on April 14th, 1975, authorizing one person to sign on the account, signed by Larry V. Howell, secretary, certification by Carolyn S. Cummings as a director.

Q Do the signatures on those authorizations appear to match those on the checks?

A Yes, they do.

Q You mentioned a letter here this morning, have you not, from Skyproof dated October 10, 1975?

A Requesting money to be transferred to Norman Bank of Commerce?

Q Yes, sir, I believe it referred to as government's [259] Exhibit 46?

A Yes, I have that in front of me.

Q Would you teli us who signed that letter, please?

A Carolyn S. Cummings.

Q Is her official capacity shown on that letter?

A Yes, it's denoted as president.

Q That you. Does your bank normally make a wire transfer of funds unless those funds are on deposit in your bank?

A We do not now. I might mention that we did at that point in time.

Q You just let anybody send a wire and not check it?

A Again, after my employment, we do not. There were wire transfers made against this account which were made against uncollected funds.

Q Okay.

A Prior to my employment.

Q Did you tell—

A I can give you the specific information on those if you need them.

Q Did you tell the Court and Jury earlier today that you had never met Harrison Cronic?

A That is correct.

Q In fact, you had never heard his name until this investigation?

[260] A That is not true.

Q When did you first hear it?

A Several employees of the bank indicated that from what they had understood from conversation with Carolyn Cummings that he was, I gather at that point in time, her boyfriend, and that he was also involved in the company.

Q Okay. But when you were going through those various checks and deposit slips, did I detect that the greatest sums were in the latter August, September, October period?

A I think that would be correct.

* * *

[261] CAROLYN RIDGEWAY,

having been first duly worn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

Q Would you state your name to the Court and Jury, please?

A Carolyn Ridgeway.

Q And, Miss Ridgeway, by whom are you employed?

A Currently I'm employed by Doyle's Electric in Norman.

[262] Q How long have you been employed by Doyle Electric?

A Since April 15th of this year.

Q Where were you employed before you were with Doyle Electric?

A United Bank of Norman from October 29th of '79 to April 15th.

Q And where were you employed before the united Bank?

A For O.G.&E.

Q Excuse me. Have you ever worked for the Norman Bank of Commerce?

A Yes, sir, I worked for Norman Bank of Commerce from April 1st of '65, to July 30th of 1976.

Q April 1st of what year; '66?

A '66, yes, I'm sorry.

Q To July 1st of '70—

A '6. Ten years.

Q And what was your title or position with the Norman Bank of Commerce at that time?

A Well, from the beginning of my employment until September of '72, I was just in the operations department. But in September of '72 to the time that I left, I was the cashier at the bank in charge of operations.

Q And as the cashier in charge of operations, did you have custody and control of the records of the Norman Bank [263] of Commerce?

A Yes, I did.

Q All right. You were the cashier of the Norman Bank of Commerce in Norman, Oklahoma, during the months of March through October, 1975?

A Yes.

Q Are you familiar with an account at the bank at the time by the name of Skyproof Manufacturing Company, Inc.?

A Yes, sir.

Q And how did you become familiar with that particular account?

A The first time that I knew anything about the account was through our overdraft list. A check was pre-

sented for payment on the account and there was not enough funds in the bank to cover it.

Q When was that overdraft presented to you, do you recall approximately what month it was?

A Probably in July or August, not too long after the account was opened.

Q All right. And what did you do after that, what, if anything, did you do when the account appeared on your overdraft list?

A Well, at first I thought it was connected with another account that we had there at the bank that did several building projects and they had several accounts that started with Sky, [264] you know. And when I went to check the signature card, the name on the card was Carolyn Cummings and that was not a name that was familiar to me. So I went to the file to see what information we had on the new account.

And I saw that it was a company in Florida and that it had been opened by Wylie Merritt, CPA in Norman. And so I called him about the overdraft and I asked him why a company in Florida was banking in Norman. And, he said, that the company was going to be branching out in other areas and that he was going to be the accountant for the company in Norman, was where he was located and so they were going to have the central offices in Norman.

Q All right. Did Mr. Merritt give you any assurance about the overdcraft would be covered, or what as the extent of that?

A Yes.

* * *

[285] CROSS EXAMINATION

Q Okay. Is it not true that you called Carolyn Cummings on July 9, 1975?

A About her account being insufficient? I don't know if I called her or if she called me. I just know that I received a wire transfer.

Q Did you at that time advise her that the account was overdrawn?

A That it was insufficient, yes, sir.

Q Did she not in fact tell you to call Mr. Merritt?

A I don't know if she told me to on that specific time. At some point during our conversations while the account was open, she did tell me Mr. Merritt was handling their deposits and withdrawals.

Q You have visited with inspector Pugsley in this matter, have you not?

A Yes, sir.

Q If his records were to indicate that you called on July 9, 1975, would that be accurate them?

A Uh-huh.

Q Okay. Did you ever talk with Harrison Cronic?

A No, sir.

Q Did you ever attempt to talk with Harrison Cronic?

A I didn't know anything about Mr. Cronic until after [286] the kite was discovered.

Q So that so far as you personally are concerned any time there was problems with this account, you talked with either Carolyn Cummings or Wylie Merritt?

A Yes, sir.

Q Do you have the signature card there for the Skyproof account?

A Yes.

Q I have handed you what has been marked Defendant's Exhibit 5. Would you identify that for us, please?

A That is the signature card that the bank requires when a new account is opened and under the name of Skyproof Manufacturing and it's signed by Carolyn S. Cummings.

Q Does it show her official capacity?

A On the appropriate resolution it shows that she's the president.

Q Does it show anyone else having signature authority?

A No, sir.

MR. COLSTON: At this time Defendant would offer into evidence Defendant's Exhibit 5.

MR. GREEN: No objections.

THE COURT: Thank you. It will be received.

* * *

[289] Q All right. In order for a bank to make a loan, it must have funds on deposit, must it not?

A Yes.

Q In other words, the amount of money it can lend is tied to the amount of deposits?

A Yes.

Q So that the greater deposits the bank has on file the greater the lending capacity?

A Yes, sir.

Q I believe you told us that the first overdraft was July 9th or July 7th, if I'm mistaken, is that correct?

A Yes.

Q Could you just take us through the next 30 days and [290] so on and show us the overdrafts or at least tell us about them.

A Okay. Our—at this time when this happened, the bank was not open on Saturdays, we were open on Friday from like 9:00 to 3:00 as that day and then from 4:00 o'clock to 7:00 o'clock that Friday evening would be our Saturday, so there can be two dates there. It's hard to explain to you but like this check—I don't have a calendar in front of me back in 1975, so I'm assuming this check on the 7th was either a Thursday or a Friday.

Q May I interrupt for a moment?

A Okay.

Q Would it shorten things to say that it is true that these insufficient funds checks occurred time and time again?

A No, sir, they—not that they kicked out for us to recognize. In the month of July, they were insufficient on the 7th and the 8th. A wire transfer came in on the 9th for $27,250.00 that was more than enough to cover them.

The next time they showed insufficient funds was July 25th. And they had a check come in for $21,000.00. Let me make sure that that amount is right. And they made a wire transfer for $20,000.00. Okay.

The check that was on the 24th of July was for $18,761.00. And they showed a current balance of $13,730.00 and they made a $20,000.00 deposit to cover it. [291] And then in—it doesn't look like they were reported insufficient at all in September.

Let's look at August. On August 6th, let's see, wait, August 1st and 5th and 6th and then 19th and 20th.

Q So you already—

A The one on the 6th she—we were wire transfered $28,500.00; the one on the 19th there were deposits that were made at a window that covered them and then August the 20th they were insufficient and we received a $75,000.00 wire transfer.

Q So you have pointed out at lest seven or eight occasions there, have you not, where they were—

A Let's see, one, two, three, four, five, six, seven, eight.

Q Time span of 30 to 45 days in there, isn't there?

A July 9th to August 20th.

Q The truth is, the bank didn't want to stop an account that was running a million dollars a month through its bank, did it?

A I don't know. I can tell you that Mr. Merritt's standing in the community had a lot to do with this being able—well,—

[292] Q What I'm getting at, if you close this account that's running through a million dollars a month, the bank loses a million dollars a month lending capacity, does it not?

A I wasn't in on the loan end of it. I don't really know that much about loans. And I know there is a loan to deposit ratio that examiners go by as far as your lending limits and everything, but I didn't have that much to do with loans, very little.

* * *

[298] Call your next.

MR. GREEN: Logan Browning.

Q Would you state your name to the Court, please?

A Logan D. Browning.

Q And, Mr. Browning, where are you from?

A Tampa, Florida.

Q What is your profession?

A Certified Public Accountant.

Q You are a Certified Public Accountant in the state of Florida?

A Yes, sir.

Q Mr. Browning, did you have occasion to perform an audit or accounting work on the books and records of Skyproof Manufacturing Company of Tampa, Florida?

A Yes, sir. It was not an audit by definition, but it was accounting work review summaries, that type thing.

* * *

[301] CROSS EXAMINATION

BY MR. COLSTON:

Q Mr. Browning, did you ever talk with Carolyn Cummings about doing accounting work for Skyproof?

A On some occasions, yes.

Q On more than one occasion?

A I would say maybe two or three different times.

Q Okay. Did you do some personal accounting work or [302] tax work for Mr. Cronic?

A Yes, sir, I did.

Q But for the Skyproof account you were paid by Skyproof funds?

A As I recall, yes.

Q Miss Cummings executed the check?

A Right.

MR. COLSTON: No further questions.

MR. GREEN: May this witness be excused to return to Florida?

THE COURT: Yes, he may be excused from further attendance at the trial.

Call your next witness.

Do you intend to offer the document, Mr. Green, before this witness leaves?

MR. RIVAS: Well, we would have to object to it, we want to look it over.

THE COURT: You would have no objection to its identification?

MR. RIVAS: No.

MR. COLSTON: That's correct.

THE COURT: He's identified it then. All right. If either side wants to offer it, it will be received.

Thank you, sir. You may be excused.

[303] **ROY MYHR,**

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court and Jury, please?

A Yes, sir, it is Roy Myhr.

Q Spell your name M-y-h-r?

A Yes, sir.

Q Where do you live, Mr. Myhr?

A Lakeland, Florida.

Q And what kind of a business are you in in Lakeland, Florida?

A Right now I'm a salesman for the Ewell Concrete Pipe Company.

Q Were you ever so associated with the firm called the Imperial Lumber Company of Bartow, Florida?

A Yes, sir, I was.

Q When were you associated with the Imperial Lumber Company of Bartow, Mr. Myhr?

A From 1967 until July, 1975.

[311] **CROSS EXAMINATION**

Q Was there an employment agreement?

A There was an employment agreement and he said, yes, he wanted—he wanted to hire me to come to work for him because I knew the lumber business, yes.

Q Was anything committed to writing?

A We had talked about it, charted out things on paper, yes. I don't recall having a contract, but there may be a contract but I don't recall right now.

Q If there was a contract out there, Skyproof would have to execute that contract, wouldn't they?

A Yes, sir.

Q Harrison Cronic couldn't execute it, could he?

A Well, I don't know. He was the one that told me when I wouldn't give him the $5,000.00 to make up the $20,000,00, "You will not come to work for me."

Q I believe you indicated that you gave the money to Miss Cummings, didn't you?

A No, sir, I did not. I gave it to Harrison Cronic and he turned it over to Carolyn.

Q Oh, he didn't keep it personally?

A He turned it over for her to deposit. Now, how they deposited it, I have no idea.

Q Just passed right through his hands, did it?

A That's your words, sir. I don't know.

Q Is that not what you're telling the Court?

[312] A I told the Court I believe that I handed it to Mr. Cronic.

Q Who in turn handed it to Miss Cummings, is that right?

A Yes, sir.

Q If Skyproof Manufacturing wasn't a going business, why would you want to have worked for them?

A At that time, looked like they were a going business, yes, and that's what I said.

Q What is this time now?

A Pardon?

Q What time are we talking about?

A This is in March of '75.

Q You were willing to give up the job that you had had for eight years to go to work for Skyproof?

A Would you repeat that, sir?

Q Was the job with Skyproof sufficiently good that you were willing to give up the job you had for eight years?

A Yes, sir. It was—he promised me a lot more money than I was making at the time.

Q You in fact toured the plant of Skyproof, didn't you?

A Oh, certainly. I did that actually before I sold him the lumber.

Q Can you describe that plant to us, please?

A The plant was actually, when it first started, was [313] one fair sized building where they were manufacturing the trusses for the mobile homes.

Q When it first started, is that implied that there was something else?

A No, sir.

Q Did they expand?

A Other than just a little biddy ofice that he had alongside. Yes, he expanded to another building right next to him. He got another building shortly thereafter.

Q Are you saying that there were two expansions or one?

A Sir, so far as I know, he just got one other building. I do not know this, his business.

Q Can you tell us approximately when this expansion occurred?

A Yes, he acquired the other building sometime in '75, sometime prior to January—or July, I'm sorry, '75.

Q When you were at Imperial and sold products to Skyproof, could just anyone there in the yard sign receipts for them?

A This, I don't know what he had, I'm sorry. He did call in orders at the lumber yard and have—that I wasn't aware of. Of course, you know, he could order from not just me but from any salesman that was over there.

* * *

[314] **WILLIAM R. DILL,**

having been first duly sworn, was examined and testified on his oath as follows:

[315] **DIRECT EXAMINATION**

BY MR. GREEN:

Q State your name to the Court, please.

A William R. Dill.

Q Mr. Dill, what is your profession?

A I'm an attorney, I office in Norman, Oklahoma.

Q And how long have you been an attorney in Norman, Oklahoma, Mr. Dill?

A Approximately seven years.

Q And were you practicing law in Norman, Oklahoma, during the period from approximately March, 1975, through the end of March, 1975?

A Yes, sir. I was there continuously during 1975.

Q And were you associated with Mr. Swinsford—Mr. Lankford, excuse me.

A Mr. Lankford, yes, sir.

Q You were known as Lankford and Dill at that time?

A Yes, sir.

Q And during the course of your practicing law with Mr. Lankford, did you have occasion to have an estate in which a 7-Up and RC Bottling plant in Paris, Texas, was in that estate?

A Yes, that was the estate of one Mr. Will Abbott.

Q All right, sir. During the course of while you were handling and probating this estate, did you have occasion to [316] talk with one Harrison P. Cronic concerning the sale of this bottling company in that estate?

A Yes, sir, I did.

* * *

[321] CROSS EXAMINATION

Q It's not unsual procedure for an operations or business manager to go out and negotiate, is it?

A It's not my recollection that Mr. Cronic ever represented himself to be an operations or business manager.

Q Did he ever represent himself to be the president of Skyproof Manufacturing Company?

A No, sir, he did not. In fact, I believe Miss Cummings was probably the president of the business.

Q Isn't it true that you never asked Miss Cummings about his authority to act?

A I asked Mr. Cronic about his authority to act on behalf of this corporation, yes, sir.

I realize that is not directly responsive to your [322] question, but I'm not certain that I ever had any direct communication with Miss Cummings relative to that.

Q At some point, you became convinced that he had the authority to negotiate, but you also equally became convinced that he didn't have the authority to execute the instruments, isn't that correct?

A No, sir, that's not entirely correct. But I believe that you're pushing me very close to an area that I probably would not be able to testify to and I would want to confer with Counsel first.

* * *

[324] **BARBARA J. HOLMES,**

having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

Q Would you state your name to the Court and Jury, please?

A Barbara Holmes.

Q Ms. Holmes, where do you live? What city?

[325] A Norman, Oklahoma.

Q And were you living in Norman, Oklahoma, during the year of 1975?

A Yes.

Q And by whom were you employed in 1975?

A I was employed by Skyproof Manufacturing.

* * *

[333] **CROSS EXAMINATION**

BY MR. COLSTON:

Q Mrs. Holmes, are you saying that at some point Mr. Cronic told you that he was your boss?

A I don't remember the exact conversation, sir, but I definitely had that impression.

[334] Q Did that come from a conversation with Mr. Cronic?

A It came—he was in the office for several days and—

Q Was that in connection with the purchase of Paris Processing?

A Yes.

Q Did you ever have occasion to ask Carolyn Cummings whether or not you should obey Mr. Cronic?

A I never even questioned that anyone else was the boss.

Q Even though he never signed any checks? She signed your payroll checks?

A She signed all the checks.

Q Didn't that imply that she had some authority someplace?

A I felt that she had some authority, but I didn't feel that she was the boss.

Q Did you know that she was the president of the corporation?

A Yes.

Q How much higher can you go?

A Well, to me a president is a figurehead.

Q President of the United States is a figurehead?

A In a way.

Q President of General Motors is a figurehead?

[335] A Who has the controlling interest in the stock?

Q Who did own the stock?

A I don't know.

Q Did you have more than one occasion with Carolyn Cummings or one occasions to talk with her on the telephone?

A I talked with her daily on the telephone.

Q Never missed a day?

A I may have, but I don't remember missing a day.

Q In those conversations did she give you the check number, the amount and the payee on the check?

A Yes.

Q And I believe you testified you kept a log of these checks?

A Yes.

Q I believe also you testified that you returned those to Miss Cummings, didn't you?

A I returned this list to her.

Q You indicated you were hired by Mr. Wylie Merritt?

A Yes.

[339] BERNARD J. SCHAFSTALL,

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court and Jury, please?

[340] A Bernard J. Schafstall.

Q Mr. Schafstall, where do you reside?

A 720 Northeast 32nd Street, Paris, Texas.

Q And what is your business or occupation in Paris, Texas?

A I'm the general manager of Har-Mar Bottling Company.

Q What kind of products does your company produce?

A Royal Crown, 7-Up and Nehi flavors.

Q How long have you been associated with the 7-Up, RC, Nehi plant there in Paris?

A Approximately four and a half years.

Q Where did you live before you were associated with the company in Paris, Texas?

A I lived in Lake Wells, Florida.

Q And by whom were you employed in Lake Wells, Florida?

A I was employed by Skyproof Manufacturing.

Q And when did you first start your employment with them, Skyproof?

A In approximately March of '73, 1973.

Q And who was it that employed you with Skyproof?

A Harrison P. Cronic.

* * *

[347] Q So the amount of volume of work that you put out there in the plant, what would be the average monthly volume in dollars of work that you would put out there at the Skyproof Company?

A Just guessing, approximately $30,000.00 a month.

* * *

[349] Q How many employees did you have there, sir, approximately?

A Approximately 20.

MR. GREEN: You may cross examine.

CROSS EXAMINATION

BY MR. COLSTON:

Q Mr. Schafstall, when Skyproof Manufacturing bought the Paris Bottling Plant, could you describe for the Court what the condition of that plant was?

A It was in poor condition.

Q Isn't it a fact that if ownership had not changed hands, the Texas Health Authorities were going to close it?

A Yes, sir, that's what I was told.

Q With that change of ownership, you were given some [350] additional time to get it cleaned up, weren't you?

A Yes, sir.

Q That plant has never been closed down, has it?

A No, sir.

Q Prior to Skyproof purchasing that bottling plant, were you employed at the bottling plant?

A No, sir.

Q It was Skyproof who put you in there?

A Yes, sir.

Q I believe you testified that you remained there today, is that correct?

A Yes, sir.

* * *

Q Who owns it now?

A Fellow by the name of Lee Martin and Bill Harrison.

Q Do you know the business name they operate under?

A The name of the corporation?

Q Yes.

[351] A Har-Mar Bottling.

Q Assuming there's just been one change of ownership, you have been basically in charge of that plant for the last four and a half years?

A Yes, sir.

* * *

[353] A No, sir.

CROSS EXAMINATION

Q When Skyproof brought the bottling plant, isn't it true that you went to St. Louis on behalf of the company?

A Yes, sir.

[354] Q And what was the nature of that meeting?

A To send a corporate representative to St. Louis to secure the franchises.

Q Is that the headquarters of the 7-Up company?

A St. Louis, yes, sir.

Q Did you have to advise 7-Up people who the owner of Paris Processing was going to be?

A They already knew that Carolyn Cummings was the owner on paper.

Q Did you not also tell them about when you went to St. Louis?

A Yes, sir.

Q Did you also advise them that Paris Processing, Inc., was a wholly owned subsidiary of Skyproof?

A Yes, sir.

Q Did you advise them that you, Bernard Schafstall, would be present and general manager of Paris Processing, Inc.?

A Yes.

Q You were in fact at one time president, weren't you?

A That's what I was informed.

Q You wrote checks, didn't you?

A Yes, sir.

Q Did Mr. Harrison Cronic write checks? Did he even have the power to write checks on Paris Processing?

A I never saw him write a check.

[361] **WYLIE C. MERRITT, JR.,**

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court and Jury, please?

A My name is Wylie C. Merritt, Jr.

[418] **CROSS EXAMINATION**

Q Mr. Green has advised all of us here today that you have made a deal with the government, is that correct?

A I have been granted immunity for my testimony, yes, sir.

Q Isn't it true that if your testimony is satisfactory to the government, the indictment will be dismissed as to you?

A That's my understanding, yes, sir.

Q That works in reverse, does it not? Your testimony has to be satisfactory before that indictment will be dismissed?

[419] A My agreement is that I will testify candidly and honestly to knowledge that I may have.

Q To make sure that you understood this agreement, it was put in writing, was it not?

A Yes, sir.

Q Have you had occasion to discuss this case with Miss Cummings?

A No, I have not.

Q When did you last visit with the United States Attorney or Postal Inspector concerning this case?

A This morning.

Q When did you visit with either office before that?

A On Tuesday of last week, I believe.

Q You're a licensed CPA in the State of Oklahoma, are you not?

A Yes, sir.

Q Is there not indeed some licensing procedure that you have to comply with to get a license?

A Yes, sir.

Q Isn't it true that there is a Board which governs this licensing process, sets the standards for CPA's?

A That's correct.

Q Isn't it true that with a felony conviction you would likely lose that license?

A That's correct.

[420] Q That's a threat to your livelihood, isn't it?

A Yes, sir.

Q You don't want to lose that license, do you?

A No, sir.

* * *

[425] Q Did you not at least on at least one occasion have opportunity to meet Mr. Cronic's aunt in Georgia?

A Yes, sir, I did.

Q Is it not a fact that you knew or learned that she was a fairly wealthy woman?

A That's correct.

* * *

[426] Q The government has alleged a conspiracy in this case, has it not?

A I'm not sure, Mr. Colston.

Q Have you ever been furnished a copy of the indictment?

A Yes, sir, I have, but I do not recall the words or the term conspiracy. It may be there, I just don't recall it.

[427] Q But with your cooperation, the government intends to dismiss as to you, does it not?

A With my testimony, yes, sir.

Q The government has also alleged Skyproof was a sham, a fraud and a pretense, hasn't it?

A Yes, sir, I believe there is language in the indictment to that respect, yes, sir.

Q In fact, wasn't it a going business and a growing business?

A To my knowledge, it was, yes, sir.

Q Isn't it true that Skyproof wanted your firm to do their bookkeeping and financial work so that everything could be centralized?

A Yes, sir, that's correct. That was my understanding.

Q Isn't it also true that your firm used a computer?

A Yes, sir, that's correct.

Q Do computers have some kind of memory bank?

A Yes, sir, generally.

Q Are you denying that you were in any way involved in a conspiracy to defraud anyone?

A Yes, sir.

Q But yet they wanted you to have the information on your computers?

A That was my understanding, yes, sir.

Q Isn't it true that in your written statement to the [428] Norman Bank of Commerce, you said Miss Cummings would mail checks to you?

A That's correct.

Q Isn't it also true that in your statement you did not say Mr. Cronic would mail checks to you?

A That's true, as I recall.

Q Isn't it also true that in your statement you said Miss Cummings would call you to verify deposits?

A That's true.

Q Isn't it also true that your statement does not say Mr. Cronic called you to verify statements?

A I don't recall that it does, no, sir.

Q Were you paid for your services in connection with the work you did when Skyproof purchased Paris Processing?

A Yes, sir.

Q Isn't it true that you were paid by Skyproof checks?

A That's right.

Q Isn't it true that in your statement to Norman Bank of Commerce of October 14, 1975, you said Miss Cummings called concerning depositing of the checks.

A Yes.

Q Isn't it also true you did not say Mr. Cronic called concerning depositing of the checks?

A To my recollection that's correct, yes, sir.

* * *

[429] Q And there was no crime being committed, was there?

[430] A Not to my knowledge.

* * *

REDIRECT EXAMINATION

BY MR. GREEN:

Q Mr. Merritt, with reference to question that Skyproof wanted to use your firm to centralize its accounting system and I believe you answered, yes, that is what you were told by Mr. Cronic; is that right?

A Yes, sir. I was told that by Mr. Cronic and Miss Cummings both on numerous occasions.

Q Did you ever receive any financial records of Skyproof to set up any type of books or systems of books?

A None whatsoever.

Q Did you ever receive any of their checks to reconcile what was going on between these checks floating between these two banks?

A No, sir.

MR. GREEN: I have no further questions.

* * *

[432] ROBERT W. BUMGARNER,

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. COLSTON:

Q Would you state your name to the Court and Jury, please?

A Robert W. Bumgarner.

Q And, Mr. Bumgarner, what is your profession or occupation?

A I'm president of the Norman Bank of Commerce.

Q You reside in Norman, Oklahoma, sir?

A Yes, sir.

[467] CROSS EXAMINATION

Q You don't have what you described as a kite scheme as large or of the magnitude of this one that you had to deal with with the Skyproof matter, did you?

[468] A No, sir, it wouldn't take long to put a bank out of business if you had very many of those.

Q Now, the note that is Defendant's Exhibit 1, I believe it's $484,915.76. You stated that there were some monies left with the Metropolitan in case they had other claims coming in which they eventually returned to you some $34,167.03, is that correct?

A That's right.

Q That made the total shortage of this figure that's being mentioned a lot $419,082.79?

A Yes, sir.

* * *

[469] CAROLYN S. CUMMINGS,
having been first duly sworn, was examined and testified on her oath as follows:

* * *

[470] Q Would you state your name to the Court and Jury, please?

A Carolyn Cummings.

Q And, Miss Cummings, what city do you reside in?

A Tampa, Florida.

Q And are you acquainted with Wylie Merritt and Harrison P. or Harrison Prather Cronic?

A Yes, sir, I am.

Q The person whom you know and knew as Harrison P. Cronic in the Courtroom?

A Yes, sir.

Q Would you identify him, please?

A In the green suit standing up.

MR. GREEN: Let the record show that she's identified the Defendant at Counsel table.

THE COURT: She does.

Q (By Mr. Green) How long have you known Mr. Cronic, Miss Cummings?

A Since 1971.

[475] Q Why were you listed as the president of Skyproof?

A Harrison had previously been involved in a company named Revere Homes that operated out of Eloise, Florida. It was a very—it had a good reputation, but unfortunately they were either under financed or had problems. I really don't know, I wasn't involved in the situation over there. So I can't say exactly. The company finally went bankrupt. There was a lot of publicity in the local newspapers about it with Harrison's name in all of the articles. Because of this and also Harrison related to me that the Internal Revenue Service had levied against him in the amount of $60,000.00 for payroll taxes that he could not own anything in his name. First of all, because of the publicity and second, of course, because the IRS would come against anything he would say was his.

* * *

[479] Q Miss Cummings, did you ever at any time sign over or tell Mr. Cronic that he was to act, negotiate or to do things on behalf of Skyproof in your role as president?

A I signed many papers. I signed anything Harrison asked me to sign. So far as me directing him to do anything on the contrary was really the other way around.

[480] Q Meaning that he told you what to do?

A I took orders from him, he certainly didn't take them from me.

* * *

[487] Q Did he tell you any[illegible]g to do to get ready in preparation for this bottling company?

A Well, I guess I would probably have to go back a little bit, you know.

Q All right.

A Okay. Originally, when we arrived at this tight cash flow situation, Harrison came with these checks from Wylie Merritt and, he said,—they were all blank with Wylie's [488] signature on them and he, told me to send Wylie some blank checks with my signature on them. And then as we used these checks of Wylie's that then Wylie would ultimately deposit like checks of ours in his account.

Harrison explained as we were struggling and having trouble with cash flow that all companies do this. It is floating, but it gives you an inflated balance and after a couple of months of this you can go to a bank and you can show them your bank statements and you have figures that look terrific. And he said this lends credibility to a business and it will give us borrowing power.

So originally I think the deposits started off rather small. But instead of the original way it was explained to me that these were just monies that didn't exist, one counteracting the other and balancing it off. Harrison wasn't ultimately drawing down on these funds that didn't exist.

When the RC Cola Bottling Company transaction came into being, Harrison said within the next week or so you have to deposit an extra $200,000.00 to cover the sale of this company, which I did.

* * *

[494] Q All right. Did you know that while you were doing this, mailing these checks and depositing these checks there in Florida and the Norman Bank, did it ever occur to you that something might be remiss, something was wrong?

A Well, it occurred to me. I think that the biggest point where it occurred to me was the point where Harrison told me to deposit the extra $200,000.00. It was hard to keep track of money in such large amounts when you weren't—I couldn't keep any records, so I didn't really know what kind of figures were going. And Harrison said if yo're nervous or upset, call the bank and get the balance. So I would call the bank and they would say there's $350,000.00. I really had no idea what kind of money there was or wasn't.

* * *

[507] Q (By Mr. Green) Now, with reference to the problems and difficulties that you were having in October 1975, did you sign the contract transferring over the stocks and the assets of Skyproof over to Norman Bank of Commerce?

A Yes, sir, I did.

Q And under what circumstances did you sign the transfer?

A The day before Thanksgiving in 1975, which was a Wednesday, I got a call from my attorney and he said, get down here right now. A representative from the Norman bank is here. I have looked over these papers he wants you to sign and I want you to come down here and sign them.

* * *

[517] Q Are there any checks in there to you or Mr. Cronic either one?

A To us?

Q Yes.

A Let me—may I look through there?

I don't believe we ever took a pay check but—no, sir.

* * *

[522] CROSS EXAMINATION

BY MR. COLSTON:

Q Miss Cummings, isn't it true that you were the president of Skyproof Manufacturing, Inc.?

A Legally, but not morally.

[523] Q Isn't it true that you were the sole stockholder of Skyproof?

A I don't have any idea.

Q Who, besides you, had stock?

A I don't have any idea.

Q Isn't it true that you did bookkeeping for Skyproof?

A I did no bookkeeping for Skyproof. We were not keeping a ledger or a journal of any type.

Q Isn't it true that you are the only bookkeeper Skyproof had until Wylie Merritt came along?

A We had no bookkeeper.

Q You knew Wylie Merritt prior to Skyproof, did you not?

A I was employed by him.

Q What was the nature of that work?

A I was a write-up girl.

Q Would you define write-up girl?

A Posting checks.

Q Are you employed today?

A Yes, sir, I am.

Q What is the nature of that employment?

A I'm a girl Friday.

Q Whatever the boss says?

A Not entirely.

Q On several occasions in June, 1975, you called Wylie [524] Merritt about preparation of a financial statement, didn't you?

A I don't remember conversations from me to Wylie Merritt, no.

Q Isn't it a fact that in early June, 1975, there was decision made to send the records of Skyproof to Mr. Merritt in Norman?

A If a decision came, it came from Harrison.

Q Isn't it true that this decision was made because of the disarray of Skyproof's books?

A There were no Skyproof books.

Q Isn't it true that in June, even earlier, Skyproof's business was growing?

A Yes, sir.

Q Isn't it true that in July, 1975, you came to Norman, Oklahoma, and visited with Wylie Merritt about a financial statement?

A I came to Norman, Oklahoma, at some point in regard to Paris Processing. If I came at any other time, it's not in my recollection.

Q Isn't it true that while in Norman, Oklahoma, you asked Wylie Merritt or advised Wylie Merritt that you wanted him to start doing Skyproof's monthly work?

A Aboslutely not.

Q If he testified to the contrary—

A I did not ask Wylie to do anything for Skyproof.

[525] Q Is it not a fact that plans were made to send all of Skyproof's records to Wylie Merritt?

A I don't know.

Q Testimony today in fact this week has indicated that there were three bank accounts, Metropolitan Bank in Florida, the First National Bank in Norman, the Norman Bank of Commerce. Do these accounts all sound familiar to you?

A The only account that wasn't familiar with it all was that First National, whatever you stated.

Q Isn't it true that yours was the only authorized signature on the Metropolitan account?

A Certainly.

Q Isn't it true tht yours was the only authorized signature on the First National Bank of Norman account?

A No, I never signed anything on the First National Bank of Norman.

Q Isn't it true that yours was the only authorized signature on the Norman Bank of Commerce?

A Yes, that's correct.

Q Miss Cummings, you have been a Defendant in this case, have you not?

A Yes, sir.

Q Have you been furnished a copy of the indictment?

A I have been furnished a copy, I didn't read it, but I was furnished a copy.

[526] Q In the indictment, it states as follows:

"Skyproof Manufacturing, Inc., at the material times and places was largely a facade and pretense."

The truth is that Skyproof Manufacturing was an ongoing and growing business?

A I didn't say it wasn't. I think I testified earlier that during one year we had sales of $150,000.00.

Q That portion of the indictment would not be true, would it?

A No, it wasn't true.

MR. GREEN: Just one moment. We object to what her opinion is, it's for the Jury—

THE COURT: No. Well, it's for the Jury ultimately, but they can hear the testimony.

Overruled.

Q (By Mr. Colston) You pled guilty to counts containing that allegation, didn't your?

A Yes, sir.

Q There were 13 counts in the indictment, were there not?

A Yes, sir.

Q Ten counts are to be dismissed as to you, are they not?

A Have been dismissed.

Q You pled guilty, as I understand it then, to [527] counts 1, 2, and 3, is that correct?

A Yes, sir.

Q Each of those counts deal with checks written to Wylie Merritt, Jr., CPA, don't they?

A Yes, sir.

Q Are you aware the Wylie Merritt has testified in this Courtroom today that there was no kiting scheme involved at First National Bank of Norman?

A I wasn't privilege to anyone's testimony.

Q Isn't it true that those checks were written to Wylie Merritt for a business purpose?

A Not that I know of.

Q Isn't it true that Wylie Merritt was factoring for Skyproof Manufacturing?

A Not to my knowledge.

Q Could you tell us what factoring is?

A Basically, it's when someone, very basically, would loan you money on sales that expected to get.

Q And then you pay back after the sale?

A When your sales came in and your monies were collected, then the money would be ultimately returned.

Q Isn't that in fact what was happened with Wylie Merritt and Skyproof?

A No, not that I know of.

Q In June and July, 1975, Skyproof had managed to [528] start getting additional credit lines with suppliers, had it not?

A I know of one credit line, there could have been more.

Q Is it not true that Skyproof had to expand its facilities on two or more, maybe three occasions?

A Two occasions.

Q This was due to increased business, wasn't it?

A Yes, sir.

* * *

[530] Q In November, 1975, wasn't there an agreement that you would sign a note, mortgage and transfer of stock?

A It wasn't an agreement. I signed the things, I did not sign an agreement saying that I would sign them, I signed them.

Q I'll hand you what has been marked as Defendants Exhibit 1. Would you identify that, please?

A This is a note to the Norman Bank of Oklahoma, bearing my signature for $484,915.76.

Q It bears your signature three times, does it not?

A Yes, it does.

Q Once as president of Skyproof?

A Oh, yes, sir.

[531] Q Once as president of Paris Processing?

A Yes, sir.

Q Once you individually?

A Yes, sir.

Q How many times does Mr. Harrison Cronic's name appear on that note?

A Harrison Cronic's name never appeared anywhere.

Q that note dated when?

A November 28th, 1975.

Q Isn't it true that on December 9, 1975, Norman Bank of Commerce had the voting rights to the stock and in essence removed all directors and officers at Paris?

A At some time they did, I don't know what date.

Q They literally locked the doors, did they not?

A I wouldn't know, sir.

Q Would you tell the Jury the due date of the first payment on that note?

A I guess it means December 1st, 1981. Oh, wait a minute. Well, due date of the note is December 1st, 1981.

Q First payment was due when?

A First payments were due June 1st, 1976.

Q You have already told us that Mr. Cronic was very upset about you signing these papers, is that correct?

A That's correct.

Q Isn't it true that you knew whoever held the stock [532] to that company had control of it?

A I didn't know I had the stock to the company.

Q Isn't it true that when you transferred the stock, you knew the new holder of that stock had control?

A I don't remember transferring the stock. I signed papers like that in my attorney's office. I don't know what I signed.

Q You literally gave Paris Processing away, didn't you?

A I did what my attorney told me.

Q Mr. Cronic couldn't control that action, could he?

A I couldn't reach him for his advice.

Q I believe you told us earlier today that you couldn't sign a check without his authority.

A That's right.

Q But you could give a company away without his authority?

A I couldn't read Harrison and I was operating under the advice of my attorney.

Q Mr. Cronic did a lot of negotiating work for Skyproof, did he not?

A He did all the negotiating work.

Q For instance, the bottling plant, the purchase of it?

A He literally went out and ran it.

[533] Q Mr. Cronic did the negotiating work and the purchase of that plant?

A Well, either he or Wylie. I realy don't know who did it.

Q Isn't it true that before the deal could be closed, you had to sign the purchase agreement?

A I signed something.

Q Now, you advised the Jury today that you have made a deal with the government, is that correct?

A I guess that's what you call it.

Q Isn't it true that you did so with the hope that you would never go to prison?

A I did so with the hope that I would not spend more than 15 years in jail.

Q You fully expect the maximum then?

MR. GREEN: Just a moment, now, we're going to object here. Now, that is something beyond the—

THE COURT: Well, the question is all right. But I will tell the Jury that nobody knows yet, because I'll do it and I don't know, because I haven't seen the pre-sentence report. But the question is all right. She's got some expectations surely.

I think I explained to her before she pled guilty she could not get more than 15 years. That's the law. That's the maximum under the law.

[534] Go ahead.

Q (By Mr. Colston) Isn't it true that your attorney advised you this was the best way to avoid possible imprisonment?

A No, sir. My attorney advised me to tell the truth. When I went into his office and told him the truth, he said, you have no alternative but to plead guilty.

Q Isn't it also true that if you don't satisfactorily testify, the government can revoke its agreement?

A Interestingly enough, I was going to testify whether the government dropped any charges against me or not.

Q Did you ask them not to drop the charges?

A It was done without my knowledge. This was prepared between my attorney and Mr. Green over the phone.

Q You stood in this courtroom on Monday and heard the agreement, did you not?

A Yes, sir.

Q Isn't it true that as late as 1977, you represented to the United States government that you were the sole stockholder in Skyproof?

A How do you mean that? Represent to the government? How do you mean that?

Q Isn't it true that you had withholding problems at Skyproof, withholding tax problems?

A I never met with the IRS or anyone regarding the [535] Skyproof taxes. Harrison met with them, I never met with them.

Q Isn't it true that you're making a monthly payment on a levy even today?

A Yes, I am. That was also levied against Harrison in federal court.

Q Isn't it true that you were asked to list all of your assets?

A Yes, sir.

Q Isn't it true that you listed all the stock of Skyproof as an asset?

A It listed in the presence of the Internal Revenue Service agents, explaining to him that I did not know what I owned or did not know what I owned, and he said if I remotely thought I owned it, to put it down to avoid perjury.

Q By trade, have you been a bookkeeper in the past?

A I am a bookkeeper.

Q Does that imply that you can add and substract?

A Most people can add and subtract, yes sir.

Q You were the only person authorized to write checks on any of those 3 accounts, weren't you?

A I was the only person authorized to sign checks.

Q Isn't it true that your name apeared on every check written by Skyproof?

A Yes, sir.

[543] WALLACE E. PUGSLEY, JR.

having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

* * *

[548] Q All right. Now, with the reconciliation at the Metropolitan Bank of Tampa.

A this account was opened on April 22 of '75 and during this period of time in reconciling the bank statement, this account was overdrawn on the first statement on March 30th, 1975, in the amount of $33.75. May the 30th overdrawn in the amount of $10,178.00. June 13th, $6,671.54. June 30th, $43,812.18. July 15th, $54,722.08. July 31, $95,970.78. August the 15th, $78,186.22. August 29th, $232,706.55. September the 15th, $289,504.47. September the 30th, $11,327.14. October the 15th, the first time it would have a plus balance $541,164.42. This being the fact that this bank had ceased paying any checks drawn on the account.

In the source of funds deposited in this account during this period of time from the deposit slips, I ascertained that $278,770.34 came from the source of Cronic, either Cronic, Inc., or H.P. Cronic, Inc. $88,237.84 from Wylie C. Merritt. $4,600,881.39 from Skyproof at Norman and others $172,062.60 for a total deposit of $5,140,069.14.

* * *

[557] HUBERT N. FIVEASH,

having been first duly sworn, was examined and testified on his oath as follows:

[558] DIRECT EXAMINATION

BY MR. GREEN:

Q Would you state your name to the Court and Jury, please?

A Hubert N. Fiveash.

Q Mr. Fiveash, whom are you employed by?

A The U. S. Postal Service.

Q In what capacity are you employed with the U. S. Postal Service?

A Postal Inspector.

Q And of what office are you stationed?

A Memphis, Tennessee.

Q You have a particular area of work that you perform as a postal inspector?

A I'm considered an audit specialist.

* * *

[562] Q That was a total of how much then, in the wire transfers and the others coming into the Norman Bank?

A $4,143,000.00 in checks, just float checks. $697,000.00 during the period June through October were wired from Tampa, Florida, into the Norman Bank, making a total of $4,841,000.00.

Q All right, sir.

A Now, the further analysis was specific areas where the funds withdrawn. In other words, what was the purpose of drawing out. Other than of the normal operating expenses payable to suppliers and so forth, I identified specific individuals like H. P. Cronic and Cronic, Incorporated, withdrew from the bank two hundred and forty one thousand, four hundred sixteen fifty-four.

* * *

[566] MR. GREEN: With that, the government rests, your Honor.

THE COURT: I think we will wait until the morning to start putting on your evidence, it's almost quitting time so let me see Counsel just a moment at the side bar, please.

(Whereupon, the attorneys approached the bench and had an off the record discusion out of the hearing of the Jury.)

THE COURT: We are going to take a recess until tomorrow morning. Every Thursday morning I hold a motion calendar and the Clerk was showing me the one for tomorrow. It's a fairly lengthy calendar. I don't know how long it will take, but we'll try to rush through and get through by 10:00

o'clock. You may have to wait on us for a few minutes, but anyhow you're going to be recessed until 10:00 o'clock tomorrow morning and we will get back to this case just as quickly as we can after we finish the Motion Docket.

You are recessed until 10:00 o'clock tomorrow morning.

(Whereupon, Court was in recess from 5:00 o'clock July 16, 1980, until 10:30, July 17, 1980, at which time the following occurred.)

[567] THE COURT: Sorry to be late, but it just took longer to conclude our motion docket than we thought.

Now, when we quit yesterday afternoon, the government rested its case. We will now hear defense witnesses.

MR. COLSTON: May I approach the bench, Your Honor?

THE COURT: Yes, come up, Mr. Green.

(Whereupon, the attorneys approached the bench and had an off the record discussion out of the hearing of the Jury.)

THE COURT: I'm sorry, we're going to be recessed a few more minutes. Just be at ease if you would like. I must talk to Counsel in chambers.

(Whereupon, the following was had in chambers out of the hearing of the Jury.)

THE COURT: The Defendant has made a motion to dismiss the indictment and each count contained therein for the reason and on the grounds that the government has wholly failed to prove any case as against the Defendant and I am going to deny that motion. It's a matter that the Jury must decide.

Now, the defense lawyers indicated to me that you do not intend to call any witnesses?

MR. COLSTON: That is correct, Your Honor.

THE COURT: I want to talk to Mr. Cronic a moment about that and be sure that you understand all of your [568] rights. This young man, Colston, I think, has done a tremendous job representing you.

THE DEFENDANT: I agree, certainly agree.

THE COURT: You acted at one time that you weren't happy, but that was earlier when you hadn't seen him in action.

THE DEFENDANT: I am certainly glad you overruled me.

THE COURT: He's a very fine young lawyer and this other young man over there too. I'm sure they told you this, but sometime the Courts should sort of intervene and help any way I can.

THE DEFENDANT: Yes, sir.

THE COURT: And I want to be sure that you understand your right to testify if you wish or to remain silent if you wish. If you did testify you would be subject to cross examination and you know that if you fail to testify I will give the instruction, that is if you wish, but that I don't give unless a defendant requests it because some defendants prefer not to have it and that is that the Jury should not infer anything by reason of your failure to testify, just constitutional right that you have not to testify and the burden is still on the government. Most people wish it given. I take it you wish it given?

THE DEFENDANT: I would have to defer to Counsel.

[569] THE COURT: You leave it with your lawyer, you know, let me show it to you. You've got one here, let's don't shoot from the hip and show it also to Mr. Colston.

Let the record show that we are showing proposed Instruction 10-A at Page 27-A.

THE DEFENDANT: Yes.

THE COURT: I take it you wish it given?

THE DEFENDANT: Yes, sir.

THE COURT: Now, the thing I want to be sure, Mr. Cronic, that you understand is that if the Jury convicts and they very well could, you know,—

THE DEFENDANT: Yes, sir, I understand.

THE COURT: They may not, but they very well could sometimes defendant says, well, I wish I had of testified, maybe I wouldn't have gotten convicted if I testified and called that girl a liar, I don't mean that literally.

THE DEFENDANT: I understand, Your Honor.

THE COURT: If I had refuted it that there might have been a different result, but, it's too late then, you see.

THE DEFENDANT: Yes, sir.

THE COURT: You don't get the second guess. But you fully understand that?

THE DEFENDANT: Yes, sir. It is my understanding that if I did take the stand, my prior conviction could be used against me.

[570] THE COURT: On cross examination it could and the only one I know of, Mr. Cronic, in that regard, I guess is the one that show—

THE DEFENDANT: Yes, sir.

THE COURT: —it shows that you were convicted in Tampa, Florida, in—

THE DEFENDANT: 1973

THE COURT: Well, this actually shows you were arrested 9/21/73 and I guess the conviction would be 3/15/74.

THE DEFENDANT: Yes, sir.

THE COURT: Or that may have been when you received it, but it was an offense of false statement to a bank.

THE DEFENDANT: Yes, sir. I pled guilty to that and I was sentenced.

THE COURT: Six months to serve, two years probation.

THE DEFENDANT: Yes, sir. The discrepancy in the dates there is where Judge Arnold Hogan, who was the sentencing judge sentenced me and gave me 30 days to get my affairs in order before I reported, that's where the difference was.

THE COURT: All right. And I take it, of course, your word is that this is the only conviction, certainly looks like—

[571] THE DEFENDANT: Yes, sir.

THE COURT: And it's supported because you were apparently fingerprinted when you were arrested on this charge in February of this year.

THE DEFENDANT: Yes, sir.

THE COURT: And it shows no other convictions.

THE DEFENDANT: Yes, sir.

THE COURT: All right. Then, I think that concludes the record unless you have questions now.

THE DEFENDANT: No, sir, I don't.

THE COURT: I think your decision to not take the stand is intelligently made with knowledge of all of your options.

THE DEFENDANT: Yes, sir.

(Whereupon, the following record was made in the Courtroom out of the hearing of the Jury.)

THE COURT: I want to make a record on one thing I forgot, but the second after the Court Reporter left in there, Mr. Cronic expressed his personal appreciation of these lawyers for the good work they have done and he wanted to make it a part of the record.

THE DEFENDANT: I would also like to state the reason I went up to Mr. Colston's office yesterday was so that Mr. Emery, his senior law partner, would know that before I either won or lost.

[572] THE COURT: All right. The reason I wanted to call you back here is you had a motion for the subpoena of certain witnesses at the government's expense and I granted it and it helped getting some of them served or one of them rather served down in Florida. You have no problem in that regard, the witnesses were here, you just decided not to put them on?

MR. COLSTON: That's correct, Your Honor.

THE COURT: All right.

* * *

[581] THE COURT: All right. Mr. Colston, you may close the argument on behalf of the Defendant.

MR. COLSTON: Ladies and gentlemen of the Jury, I want to also express my appreciation for your attentiveness and I want to express my personal appreciation for your patience with me in this case.

Now, the Judge later on today will give you instructions. One of these instructions is going to deal with the issue of reasonable doubt. If any one of you has a reasonable doubt, you can't convict this man. Any one of you. [582] Not all twelve of you. You're individuals, you can think, you can look at the evidence for yourselves and make your own decision. Don't let people lead you. Now, it could be at some point, say 11 people think one thing and one person thinks another. That doesn't make that person's doubt unreasonable.

Now, the government has alleged that Mr. Cronic has come up with some $200,000.00. I think they said in excess

of $200,000.00. You can look at the evidence. You can look at the exhibits, figure it out for yourself.

The government has stated that Carolyn Cummings has come out with some $40,000.00 or better. Again, you can determine that. She says she got nothing.

Mr. Wylie Merritt has testified that he made a profit of some $1300.00 on his factoring arrangement with Skyproof. The government says that he and his partner have cleared some $20,000.00.

Now, in the indictment, the government has alleged a scheme. When I got into this case three or four weeks ago, I did not think there was any scheme whatsoever. Now I do. But let's look at what the scheme was. We have the Norman Bank of Commerce who discovers a huge insufficiency in its accounts. It gets worse. What does it do? Calls the people and within 30 days or so, they have a note, a mortgage, and the corporation's stock. What was the size of the note? The exact amount of the insufficiency. Now, let's take this [583] in sequence. We have a note of November 28th, 1975, at the same time the bank got the note it got the stock. Eleven days later the bank had that plant. The first payment wasn't due for another 5½ months. The bank put its people in there, taking the plant over and to this date that plant remains with the Board of Directors or members of the Board of Directors of that bank.

Now, you heard the president of the bank say that the bank examiners made us remove the biggest portion of that note from their books. Did you hear one bank examiner in this room? Did you see one? No. You also heard the president of that bank say that we don't loan to anybody, no customers, more than $170,000.00. But think back, one of the last things Mr. Bumgarner did was to identify a mortgage from Har-Mar Bottling Company to two of its Board of Directors. What was the amount of it? $504,000.00 with a commitment for an additional $170,000.00. If that bank wasn't fully secured and collateralized with a loan of $484,000.00, how could he say they're secured and collateralized with a loan of some $674,000.00? None of that makes any sense, ladies and gentlemen. I agree there is some scheme there.

Now, the government has tried to make you believe from the word go when it wrote that indictment, it wanted you to believe that was a sham corporation. When we were here Monday for opening statements, what did I tell you? I said [584] with the government's own witnesses I will prove to you that is not right. Now, what did each of these witnesses say? Wylie Merritt, the government's star witness. I know they're doing business because I did business with them. I made $1300.00 doing business with them. Mr. Green has the gall to call his own star witness a liar. Bernard Schafstall, the plant manager of Skyproof at the government's request, he makes an estimate of what they're making down there, what are you billing out? Oh, $30,000.00 a month. That's $360,000.00 a year. What else did he tell you? That business was good enough that they had to expand not once, but twice. Carolyn Cummings, the government's other star witness. What was her testimony? $150,000.00. We expanded not once, but twice. Ray Myhr comes in from a lumber company who does business with Skyproof. What does he tell you? There were times when they bought all the lumbar I could give them. Is that a sham? That business was ongoing, it was growing. The indictment is written such that the government wants to make you think if Mr. Cronic is guilty of one count, he must be guilty of all of them. Go in reverse. If he's not guilty of one count, is he guilty of any?

What has happened here? One of the government's star witnesses got on that witness stand yesterday. Wylie Merrit. What did he tell you? The first three counts of that indictment are not true. Ladies and gentlemen, he was under an agreement [585] which he described to you, I have got to testify to please the government or they may not dismiss these counts against me. He had the nerve to sit there and tell you the truth.

The government has talked about no intent or inability to cover these overdrafts. Go back, as soon as the bank sees that it's—it's considerable size, it worries them. They get a note and mortgage face amount equaling the overdraft. Look at the note when you go to the jury room. Have you seen them? You can look at it.

The government has testified here that the loss is supposed to be $484,000.00. Look at the note. The president says he can't show it on the books at that mount, but yet he can show one at 50 percent greater amount?

You also heard Wylie Merritt testify in respect to ability to cover that he personally met Mr. Cronic's aunt, Mrs. Chestia Absen, and he knew that she was of sufficient wealth to be able to cover it herself. Why should he cover the note? He didn't have anything to do with it.

Now, we get to the ownership. Who owns what? Think back again to Monday morning when I was talking with you, Monday afternoon. I said, look, you're going to hear this man's name tossed around. I have no doubt of it. Listen, listen, it's your obligation to listen but look at what the people did, not what they said.

Mr. Bob Dill represents the estate who sells the [586] bottling plant. Hints were made that there may be some kind of trust situation, she was out front for him. Did he show you a trust instrument? Where she said and admitted that she held title for him. Wylie Merritt in an anti-trust instrument hinted that she held in trust for him. Did she ever sign a document admitting that she was only a trustee? When Mr. Bob Dill got ready to have the purchase agreement, did he go to what he called the true owner? No.

Mr. Bernard Schafstall, the plant manager, they became plant manager at the bottling company. What did he tell us? Harrison owned it. What did he do? He testified he went to St. Louis, the headquarters of 7-Up and tried to get the franchise changed and what did he tell those people? Skyproof owns Paris Processing, Skyproof is a going business, Carolyn Cummings owns the stock of Skyproof.

Mr. Heiple comes in, the attorney for the bank, adamant Harrison Cronic was that corporation. But yet when it's time for action, he and Mr. Bumgarner both testified that Mr. Heiple was involved in preparing the note, mortgage, stock transfer and Mr. Heiple is an attorney and Mr. Heiple knows he better get it in advance from the true owner. Did you see one from Harrison Cronic?

Mr. Bumgarner, president of the bank, comes in and talks about the ownership of Paris Processing. He didn't

say, "I think Harrison Cronic owned it, I know he did, I saw the [587] stock certificate. Do you recall yesterday we had a little lengthy lunch so the Norman Bank of Commerce could get the papers up here they're supposed to have. One of them is a stock certificate. When he was faced with it, he says, I was wrong, Skyproof owned Paris Processing. Look at the stock certificate. You can see. You're entitled to it.

Three bank accounts we have been talking about here in these last four days. Did you see one account in which this man could take a red cent out of? If you go down and open a bank account in your name, how can I go take the money out of it? How can I profit that way?

You also have been told by just about everybody that testified it looks like he was doing just about all the work that was done there, at least on an administrative level. Why wouldn't you make some money? Why wouldn't he be paid a good salary?

Carolyn Cummings. I didn't know anything. I didn't make anything. The government said she made over $40,000.00. I will leave that to you and you can look at the checks and figure it out for yourelf. But I want you to look at every check. You will be able to see the checks if you want them. Two people signed every check that will be in that room with you. Carolyn S. Cummings, Wylie Merritt, Jr. Nobody else. If she comes in and says, look, I can't sign a check unless Harrison tells me to. And then she admits that he [588] is in Paris, Texas, but she covers it; the telephone. Show me a telephone bill. It's easy to say things. Show it to us. They don't want you to see some of these documents.

One of the principal elements of this case, mail, that is why we have a postal inspector over here. Fidelity bank sent not one, but two gentlemen over here to testify about mailing. They hemmed and hawed on direct examination trying to lead you down the path making you think they knew they mailed it. On cross examination under oath, did not both of those gentlemen testify that they could not tell you of their own personal knowledge that any of these checks were mailed. None of them. They brought in these receipts. Look at the receipts when you go into the jury

room. You can't anymore tell what is on those receipts than a man in the moon. There's one thing they could tell us we were told yesterday that there's something called a mailing list, I believe, and it existed for two years after the fact. Mr. Pugsley, I have no reason to doubt that man's ability, he's been on this job for over 30 years, but what did he tell you? I made a mistake and I didn't do a good job. Well, there have been some things that the government didn't want to show you, didn't want to produce possibly. Mr. Bumgarner didn't want to see that stock certificate, did he? Did he not want you to not see those mailing lists? They've got to prove it. They can't just tell you. Show you. The government had five years to produce [589] the single most important document in this case. It's not in evidence. Mr. Briscoe, one of the gentlemen from Fidelity, tells us begrudgingly, there were times we didn't use express mail. Try to get away from that.

Ladies and gentlemen, you remember you're going to be instructed as to reasonable doubt. All of these things can't contribute, if not, individually creating that doubt accumulatively. Keep it is mind. Think of yourself. What did you hear and what did you see? They're trying to make you think this man is Houdini.

Carolyn Cummings said, well, I gave the plant away and he wouldn't speak to me for a week. I guarantee you, if my wife gave away a half a million dollars, it's going to take me more than a week to get over it. Carolyn Cummings said I can't sign checks unless Harrison tells me but when it came time to give the whole thing away, she says, I did what my lawyer told me to do. Not what Harrison told me to do. By the way, didn't she say, my lawyer, didn't she? How could her lawyer know the facts unless she told him? She didn't say Skyproof's lawyer. My lawyer.

Just please keep in mind what I talked to you about and listen to what the witnesses said, look at what they did.

Now, let's go back to the indictment. There are 13 counts in that indictment. Again, it's written to make you believe if you're guilty of one you're guilty of all. But I [590] say the reverse is true also. If you're not guilty of one, you're not guilty of any of them. The government's own witness

that it dismissed as to all counts says those first three are just not true.

What did Miss Cummings do? Chose to plead to those three counts. Well, that's pretty easy because the next star witness coming right behind her saying didn't happen anyway.

Ladies and gentlemen, you have been sworn to uphold the law and to follow the law. But by the same token, you're here for justice. What's happening to Wylie Merritt? That man was free yesterday, he is today and tomorrow unless the government gets mad at him for telling the truth and chooses to come back. Carolyn Cummings, she's guilty to three counts, the other witness said it didn't happen anyway. What's going to happen? But yet the government wants you to find my client, Mr. Harrison Cronic guilty of 13 counts, three of which its own star witness says, no, it didn't happen.

Any reasonable doubt any one of you, and you cannot convict my client. Don't let people stampede you. Think for yourself.

Thank you.

THE COURT: Thank you, Mr. Colston.

* * *

[598] MR. GREEN: Judge, I'm sorry, I think we need one expert witness instruction. We qualified Mr. Fiveash specifically as expert and we had Browning.

THE COURT: Well, expert testimony was heard and it would be proper if fact matters hinged on the expert, but here [599] it doesn't.

MR. GREEN: All right.

THE COURT: I don't believe it's necessary and especially if the Defendant doesn't think it is.

MR. COLSTON: I don't think it really does, Judge.

MR. GREEN: Well, I had submitted this, but perhaps we might on that legal ownership, unless they ask a question—

THE COURT: I don't think so, because we have got here aider and abettor and it doesn't make any difference even if they both were legal and equitable owners if he aided and abetted.

* * *

THE COURT: Well, boys, I want to tell you again I [600] appreciate you two, you know, this guy couldn't have got a better representation if he had hired someone in Florida or Oklahoma City or anyplace else and I appreciate it.

IN THE UNITED STATES DISTRICT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, PLAINTIFF

v.

HARRISON P. CRONIC AND CAROLYN S. CUMMINGS,
DEFENDANTS.

SENTENCING
HAD BEFORE THE HONORABLE LUTHER B. EUBANKS
ON AUGUST 28, 1980
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

MR. JOHN E. GREEN, First Assistant, United States District Attorney, Federal Building, Oklahoma City, Oklahoma, appearing on behalf of the Government.

MR. CHRIS E. COLSTON, First National Bank Building, Oklahoma City, Oklahoma, appearing on behalf of the Defendant, Cronic.

MR. ARNOLD D. LEVINE, of Tampa, Florida, appearing on behalf of the Defendant, Cummings.

[2] THE COURT: All right, United States versus Cronic and Cummings. This comes on for sentencing. The Defendants, yes, come forward with your Counsel, please.

May I inquire of the Defendant, Cronic, Harrison Prater Cronic, have you and your lawyer read the pre-sentence report in this case?

MR. COLSTON: Yes, Your Honor, we have.

THE COURT: Do you find it to be in acceptable form? That is, are there errors or anything that need to be cured?

MR. COLSTON: It is acceptable, Your Honor.

THE COURT: You find it to be accurate?

THE DEFENDANT: Yes.

THE COURT: Subject to your right to address the Court a little later, is there any just cause, legal or otherwise,

known to either Counsel or the Defendant why sentence cannot be imposed today?

MR. COLSTON: No, Your Honor.

THE COURT: All right. Well, here, I'm going to ask three folks, did you hear what I have said; have each of you read the pre-sentence report?

MR. LEVINE: Yes, sir, Your Honor please, we have read the pre-sentence report and it's in acceptable form and we have no exceptions to the formal content.

THE COURT: Is that your—

* * *

[3] MR. COLSTON: Your Honor, Mr. Cronic and I are aware of the requirements you set forth in our conference concerning a possible probated sentence in this case. Mr. Cronic's family is ready to pay a half a million dollars, whatever the figure is arrived at. The family did want and still wants their own CPA to verify a figure due and owing to the bank because they do want the bank whole. We have run into problems with the bank in that respect and—

THE COURT: Well, as I understand it, I have been getting copies of letters and mailgrams and whatever, that has been promised, as I recall, in a letter from—what's the name [4] of the lawyer for the bank?

MR. COLSTON: Mr. Heiple.

THE COURT: Right. Conditioned only that the federal reserve people approve it and that the money be put up in escrow which would assure that once the audit is made, that it's going to be paid. In other words, not just a dry run. Now, wasn't that the—

THE COLSTON: That was the gist of it. They also had a beginning figure that they demand and that we start at which was not acceptable and that it put certain values—

THE COURT: Well, all right.

MR. COLSTON: But even so, we would ask the Court permission to continue to attempt to reach a settlement because we do want to make the bank whole. There's no question of his family's ability to reimburse the bank and it's their desire to do so.

THE COURT: Well, I am glad to hear that. I think I made it clear when I conferred with you people in Cham-

bers that nearly 30 years on the bench adding the State Court District Judge time, it's the first time I've ever done it, but this is most unusual case and it's not the function of this Court to try and enforce civil responsibilities in a criminal case. I did feel that if restitution would be made it was the appropriate thing to do in this case, I still feel that way and I will not withdraw it, the commitment that I have made, the [5] promise I have made. But we are here today to impose sentence. The Court has the right within 120 days to modify any sentence imposed and if you think you can reach an accord, go to it. If it's more, you recall now we are on record here and we had a Court Clerk taking minutes the other day, although we didn't have a Court Reporter.

MR. COLSTON: That's correct, Your Honor.

THE COURT: The proposal was more than just making restitution to the bank.

MR. COLSTON: Yes, sir.

THE COURT: And I know you communicated, but it also required that this Defendant pay you and the associates that helped you in the trial and not have any expense to the federal government. Also to pay the income taxes and other taxes that were charged against the co-defendant here, as a result of the acts, the court costs including the costs of the prosecution be paid and what else was it; we had a list of all those things. And that there would be a fine of $11,000.00 I think—did the probation officer give you a copy of this handout this morning, the total amount now with the bank's figures subject to a later upward or downward adjustment, dependent upon the audit?

What I have here would be $418,755.36.

MR. COLSTON: We have got the bottom line, Your Honor.

* * *

[7] THE COURT: For you, Mr. Cronic, as I said when the Jury returned its verdict, you're just as guilty as sin and you have swindled these people out of many hundreds of thousands of dollars and got this young lady in terrible trouble in the interim and the Court just has no sympathy at all for you.

But I still believe that as much as I think you ought to serve prison time, I know you have done this same thing before, just got out of prison and turned around and did [8] it again, but in this case because of the fact that some of the people that lost money just can't afford to lose it and I have wrestled with the problem in my mind and finally concluded that if you can get these rich aunts to pay all of these things that that would be better than having you serve a prison time. And I would immediately re-sentence you and I think it's understood that you would be given a five-year probation term.

DEFENDANT CRONIC: Yes, sir.

THE COURT: Now, you have got the keys to the penitentiary in your pocket now, young man.

DEFENDANT CRONIC: Yes, sir.

* * *

DEFENDANT'S EXHIBIT 2

MORTGAGE AND SECURITY AGREEMENT

This indenture made at Norman, Oklahoma, as of this 3rd day of January, 1978, by and between HARMAR BOTTLING CO., a corporation, hereinafter referred to as "mortgagor" and NORMAN BANK OF COMMERCE, a state banking corporation, hereinafter referred to as "mortgagee", witnesseth:

That the mortgagor, for and in consideration of a loan in the amount of Five Hundred Four Thousand and no/100 dollars ($504,000.00) made by the mortgagee to the mortgagor, the mortgagor has granted, sold, assigned, pledged, mortgaged and conveyed, and does by these presents grant, pledge, sell, assign, mortgage and convey, unto the mortgagee, its successors and assigns, the following, to-wit:

> All of the property, both real and personal, tangible and intangible, vested and contingent and wherever situated (hereinafter collectively referred to as "said property"), as more particularly described on "EXHIBIT A—PROPERTY LIST" attached hereto, incorporated herein, and made a part hereof,

together with the leasehold estate(s) or other estate, interest or title owned by the mortgagor or to which the mortgagor is entitled under and by virtue of ownership of, and interest in and to, said property, or to which the mortgagor may hereafter become entitled under the same, or under any other instrument covering any of said property, whether now existing or hereafter given, and all the mortgagor's right, title and interest in and to, all and singular, the tenements, hereditaments, and appurtenances belonging or in anywise appertaining to said property and premises, including all oil stored thereon belonging to the mortgagor, and the mortgagor's proportionate part of the metals, coal, oil, gas, and other minerals in and under said land or which may be produced therefrom, and of the oil and gas wells, oil well supplies, machinery of every kind and character, oil well equipment, buildings, compressors, powers, derricks, pipelines, tanks, casing, tubing, rods,

line pipe, and telephone lines located on said leased premise, and of all casing, tubing, and rods in any of the oil and gas wells located thereon and used in the operation of said premises for oil and gas, and all such other property which may be hereafter placed or located thereon to be used in the production of oil, gas, metals, coal and other minerals.

To have and to hold the said property, with all the right, members, hereditaments, and appurtenances now or at any time hereafter in anywise appertaining or belonging thereto, unto the said mortgagee and its successors or assigns forever: Provided, always, and these presents are upon the express condition, that, if the mortgagor, or the heirs, executors, administrators, successors or assigns of the mortgagor, shall well and truly pay, or cause to be paid, to the mortgagee, its successors or assigns, the indebtedness hereby secured, according to the terms and conditions of the note(s) evidencing the same, as hereinafter set forth, and all other sums secured by this conveyance, as the same become due and payable, and if the convenants and agreements contained in this instrument be kept and performed, then, and in that event only, these presents shall be void; otherwise the same shall remain in full force and effect.

This conveyance is intended as a mortgage, and is given for the purpose of securing the payment of an indebtedness according to the terms and conditions of 3 promissory notes of even date herewith, executed by the mortgagor in favor of the mortgagee in the original amount of $504,400.00 plus lawful interest, as more fully recited therein.

* * *

During any and all times when the notes, and any extensions or renewals thereof, secured hereby are in default, mortgagee may, at its sole option and without notice, exercise voting powers of any corporate stock which is covered by this Mortgage and Security Agreement, and any extensions or renewals hereof.

In witness whereof, the parties hereto have caused these presents to be executed and the appropriate seals affixed as of the 3rd day of January, 1978.

HARMAR BOTTLING CO., MORTGAGOR

BY: Lee K. Martin

LEE K. MARTIN
Vice President

Attest:

Secretary

NORMAN BANK OF COMMERCE: MORTGAGEE

BY: Robert W. Bumgarner

ROBERT W. BUMGARNER
President

Attest:

C. B. Meador

Cashier

STATE OF OKLAHOMA

ss:

COUNTY OF CLEVELAND

Before me, Charlotte F. Edington, a Notary Public, on this day personally appeared Lee K. Martin, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the Vice President of HARMAR BOTTLING CO., a corporation, and acknowledged to me that he executed said instrument for the purposes and considerations therein expressed, and as the act of said corporation. Given under my hand and seal of office this 3rd day of January, 1978.

BY: Charlotte F. Edington

CHARLOTTE F. EDINGTON
Notary Public

My Commission Expires:
Nov. 21, 1978

(Notary Seal)

STATE OF OKLAHOMA

ss:

COUNTY OF CLEVELAND

Before me, Charlotte F. Edington, a Notary Public, on this day personally appeared Robert W. Bumgarner,

known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the President of NORMAN BANK OF COMMERCE, a corporation, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation. Given under my hand and seal of office this 3rd day of January, 1978.

BY: Charlotte F. Edington
CHARLOTTE F. EDINGTON
Notary Public

My Commission Expires:
Nov. 21, 1978

(Notary Seal)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

No. P-76-37-CA

NORMAN BANK OF COMMERCE, A CORPORATION, PLAINTIFF,

v.

PARIS PROCESSING, INC., ET AL, DEFENDANTS.

ORDER OF SALE

To: The Sheriff of Lamar County, State of Texas:

WHEREAS, on November 17, 1977, the United States District Court for the Eastern District of Texas (Paris Division) in an action wherein Norman Bank of Commerce was plaintiff and Paris Processing, Inc., et al were defendants, plaintiff recovered judgment against defendants Paris Processing, Inc., et al in the sum of $475,665.76 plus interest thereon at 8% per annum from November 28, 1975 until paid plus Court costs and attorney fees of $10,000; and

WHEREAS, this Court further declared said sums to be valid first mortgage liens upon and against the property and premises hereinafter described and further decreed that said mortgage liens be foreclosed against said property and said defendants, and it decreed that an Order of Sale shall issue, directing the sale, according to law and in the manner hereinafter set forth, of such as can be found of the property securing the lien of plaintiff, and

WHEREAS, said judgment remains unpaid and plaintiff has applied for an Order of Sale to issue in accordance with the Order of this Court.

NOW, THEREFORE, these are to command that you forthwith proceed to give Notice of Sale and sell, at public vendue to the highest and best bidder at 10:00 A.M. on the first Tuesday of January, 1978, at the Courthouse door of the Lamar County, Texas courthouse, situated in Paris, Texas, all of the property described on "Exhibit A" attached hereto and made a part thereof. You shall give notice of such proposed sale by posting written notice thereof at least 21 days preceding the sale at the courthouse door of

said Lamar County Courthouse. Plaintiff is authorized to bid at said sale and, if plaintiff is the highest and best bidder, plaintiff shall be allowed a credit against its bid in an amount up to the total amount of its judgment, including interest, costs and attorney fees.

The proceeds arising from the sale of the above-described property shall be applied to the following priorities: (1) costs of this sale; (2) judgment of plaintiff, Norman Bank of Commerce, in sum of $475,665.76 plus interest, costs and attorney fees as described above; (3) the balance, if any, to be paid to the Clerk of this Court to abide the further Order of this Court.

You will make due Return of this Order of Sale with your proceedings endorsed thereon, showing the manner in which you have executed the same, within 60 days from the date hereof.

SIGNED AND ENTERED THIS 30TH DAY OF NOVEMBER, 1977.

/s/ Wm. Wayne Justice
WM. WAYNE JUSTICE
United States District Judge

APPROVED:

/s/ _____
Attorney for Plaintiff
P.O. Box 847, Norman,
Oklahoma 73070 (405) 321-0090

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

No. P-76-37-CA

NORMAN BANK OF COMMERCE, A CORPORATION, PLAINTIFF,

v.

PARIS PROCESSING, INC., ET AL., DEFENDANTS.

SHERIFF'S RETURN OF SALE

I received the attached Order of Sale on the 5th day of December, 1977, and pursuant to the commands thereof, I did take possession of the property and premises more particularly described on "Exhibit A" attached hereto and made a part hereof. I did cause Notice of the time and place of sale of said property to be given by posting at the Courthouse door of Lamar County, Texas, Courthouse situated in Paris, Texas, more than twenty-one (21) days prior to the date of sale.

On the first Tuesday of January, 1978, being January 3, 1978, at 10:00 A.M. of said day, I offered said property for sale at the East door of the Lamar County Courthouse in the City of Paris, State of Texas, that being the time and place stated in said Notice at public auction, to the highest and best bidder for cash in hand, and sold the same to plaintiff, Norman Bank of Commerce, for the sum of $504,000.00, the same being the highest and best bidder for said property, said bid being credited against the judgment heretofore rendered in favor of plaintiff against defendants Paris Processing, Inc., et al.

I hereby certify that the foregoing is a correct statement of the times and manner of executing said Order of Sale. Signed, dated and returned into Court this 3rd day of January, 1978.

/s/ Roger Peterson
ROGER PETERSON
Sheriff of Lamar County, Texas
BY E. L. LENOIR, *Chief Deputy*

AFFIDAVIT OF LOGAN BROWNING

AFFIDAVIT

STATE OF FLORIDA

STATE OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared Logan D. Browning, C.P.A., who, after being first duly sworn by me according to law, deposes and says that:

1) He is a Certified Public Accountant with an active practice in the city of Tampa, Florida.

2) On or about August 4, 1980, he was asked by Harrison P. Cronic to determine what amounts, if any, were owing by Mr. Cronic, Skyproof Manufacturing, Inc. or Paris Processing Co. to the Norman Bank of Commerce, Norman, Oklahoma, as a result of a recent trial.

3) A tentative date of August 11, 1980 was set for him to visit the bank and Paris Processing Co. in order to determine the accounting transactions recorded by the bank (relative to the transactions with Mr. Cronic, Skyproof Manufacturing, Inc. and Paris Processing Co.) and by Paris Processing Co. (relative to the results of its operations since the time it was taken over from its parent—Skyproof Manufacturing, Inc.)

4) He was informed by both Mr. Cronic and Mr. Colson (an attorney) by telephone that the records would not be made available to him by the bank of Paris Processing Co., according to the attorneys for those companies.

5) He spoke telephonically with Judge Eubanks concerning the importance of such an inspection of the records to determine the amount of any liability and was informed by the Judge that he did not have the authority to require that the records be made available to him—even though the Judge felt it was a reasonable request.

6) He expressed his frustrations to Mr. Cronic verbally and by letter and further advised Mr. Cronic that it would be impossible to determine any such liability if these pertinent records were not made available. (See attached copy of letter dated August 19, 1980 addressed to Mr. Cronic).

FURTHER DEPONENT SAYETH NO.

/s/ Logan D. Browning
LOGAN D. BROWNING

Sworn to and subscribed before me this 12th day of December, A.D. 1980.

/s/ Beverly Ann De Meza
BEVERLY ANN DE MEZA
Notary Public

My Commission Expires:
Notary Public, State of Florida at Large
My Commission Expires Aug. 14, 1984

AFFIDAVIT OF DON MILLICAN

AFFIDAVIT

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

Before me, the undersigned authority, personally appeared Don P. Millican, a certified public accountant employed by the firm of Price Waterhouse & Co., who, after being duly sworn by me according to law, deposes and says:

1. Mr. Harrison P. Cronic contacted me on or about the last week in July 1980, in reference to conducting a review of books and records of a company with which Mr. Cronic had been associated and the Norman Bank of Commerce to determine what, if any, money Mr. Cronic might owe to these two firms.

2. I informed Mr. Cronic that I would prefer dealing with his attorney in this matter.

3. I contacted by telephone Mr. Chris Colton of Hemry & Hemry, attorneys in Oklahoma City, who confirmed that he was in fact representing Mr. Cronic in this matter. He also indicated, however, that the Norman Bank of Commerce would not, at that time, permit access to the records necessary for such a review.

4. In a later conversation, I informed Mr. Cronic of Mr. Colston's comments.

/s/ Don P. Millican
DON P. MILLICAN

Sworn to and subscribed before me this ____ of the _____ of ____.

Notary Public

_____

(Seal, Signature and Expriation Date)

PSYCHOLOGICAL & EDUCATIONAL CONSULTANTS
Virginia A. Boyle, Ph.D.
539 Green Street, N.W.
Gainesville, Georgia 30501
August 20, 1980
Licensed Applied Psychologist
Telephone (404) 532-9596

Mr. Harrison Cronic
635 Dixon Drive
Gainesville, Georgia 30501

Re: AttorneyRepresentative
Federal Court Case
Oklahoma City, Oklahoma

Dear Mr. Cronic:

In response to your questions regarding the representation and defense of your case by your attorney, Chris Colston, and the quality of his relationship with you as your attorney, I would like to offer the following opinions and impressions of the two phone conversations to which I listened on June 26th and July 10th of this year;

1. Mr. Colston appeared to feel insecure in his position in representing you in the role of a criminal trial lawyer. That probably is not so surprising when it is realized that as a specialist in real estate law, he typically is not called upon to represent his clients in the type of court process which requires open confrontation and knowledge of jury psychology. In any case, in feeling insecure, I am saying that he likely did not feel competent in representing this case. Under these conditions and under the severe time constraints he had with which to acquaint himself with the details of the case as well as with the procedures of this type of case and court presentation which were not characteristic of his practice as an attorney, I would say he was experiencing considerable stress. This could account for the irritability and defensiveness he showed toward you while working on the case. This is also why, when you asked what you could do to improve the situation, I recommended that you attempt to praise the work he did as much as possible, and particularly in public.

2. Mr. Colston did not impress me as being an outwardly aggressive individual but more the type of man who tends to hold feelings inside until he can find a safe way to discharge them or until he explodes in confusion. Consequently, I would not expect him to be a confrontative person who would openly attack conflicting issues nor would he be apt to stir up anger in others, but he would be more likely to delay or avoid it. I would suggest that he was not the most psychologically qualified attorney to represent you in this type of court case which would need an aggressive, confrontive attack on conflicting issues in order that you be fairly represented.

3. It was my impression that Mr. Colton has difficulty responding quickly and clearly while under stress, particularly those types of stress with which he has not coped regularly and successfully. I would hazard to guess that he has become a specialist in real estate law because it does not present the types of stress which are involved in some other areas of law practice. Under stress Mr. Colton might well block and become immobilized. Given time and an opportunity to pull away from the stress, he does seem quite able to objectify and to organize his thinking effectively. However, given the type of court situation in which he is being called upon to function, I do not think he would be able to function as you would need him to function for your best defense.

I would say that I think it would have been in the best interest of a fair and competent representation in your case had Mr. Colston withdrawn himself from it. I think it might have been difficult for him to admit his weaknesses in this instance, and, as such, could not bring himself to withdraw from your case.

I hope these opinions and impressions have been and will be helpful to you in pursuing a fair hearing of your case. Thank you for this opportunity to work with you.

Sincerely,

/s/ Virginia A. Boyle

VIRGINIA A. BOYLE, Ph.D.
Licensed Psychologist

VAB/mv

AFFIDAVIT OF HARRISON CRONIC

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF HALL

Before me, the undersigned authority, personally appeared HARRISON P. CRONIC, who, after being duly sworn by us according to law, deposes and says that:

1.

Mr. Chris Colston, stated to me on several occasions that the actual number of effective working days he had to prepare for the trial which begin on July 14, 1980, was from 18 to 22 days.

2.

I met with Mr. Colston for approximately four hours on Sunday, July 13, 1980, the day before the trial began. This was the only substantive meeting held between Mr. Colston and myself prior to or during the trial.

3.

Mr. Chris Colston was hostile and petulant toward Defendant Cronic. On one occasion during the trial, Mr. Colston told Defendant Cronic in response to a question by Cronic to "(elplitive denoting sexual intercourse) off."

Further deponent sayeth no.

/s/ Harrison P. Cronic
HARRISON P. CRONIC

Sworn to and subscribed before me this 8 day of February, A.D. 1981.

/s/ EVELYN G. PENDLEY
EVELYN G. PENDLEY
Notary Public

My Comm. expires March 12, 1984

Supreme Court of the United States

No. 82-660

UNITED STATES, PETITIONER,

v.

HARRISON P. CRONIC

ORDER ALLOWING CERTIORARI. Filed February 22, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.